

***United States Court of Appeals  
for the  
District of Columbia Circuit***



**TRANSCRIPT OF  
RECORD**



**F649**

**JOINT APPENDIX**

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**United States Court of Appeals**

**FOR THE DISTRICT OF COLUMBIA CIRCUIT**

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**No. 19,841**

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**BONTA, INC., et al.,**

*Petitioners*

**v.**

**W. WILLARD WIRTZ, SECRETARY OF LABOR, et al.,**

*Respondents*

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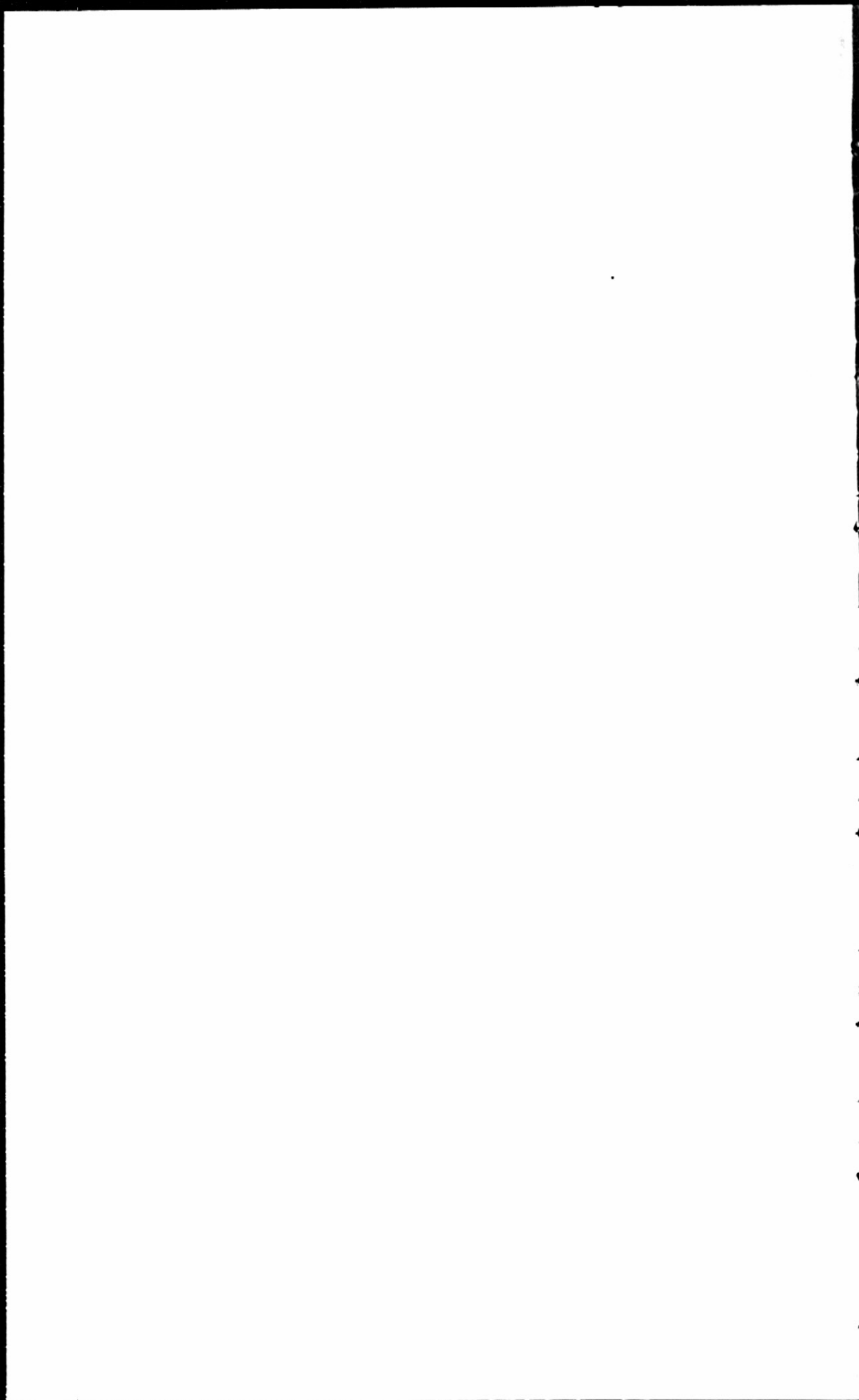
**ON PETITION FOR REVIEW OF A WAGE ORDER  
ISSUED BY THE ADMINISTRATOR OF THE  
WAGE AND HOUR DIVISION OF THE  
U. S. DEPARTMENT OF LABOR**

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**United States Court of Appeals**  
for the District of Columbia Circuit

**FILED JUN 2 1966**

*Nathaniel J. Paulson*  
CLERK



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[1] UNITED STATES DEPARTMENT OF LABOR  
WAGE AND HOUR AND PUBLIC  
CONTRACTS DIVISIONS  
WASHINGTON, D. C. 20210

**REPORT, FINDINGS OF FACT, AND RECOM-  
MENDATIONS OF INDUSTRY COMMITTEE  
NO. 75 FOR THE SWEATER AND KNIT SWIM-  
WEAR INDUSTRY IN PUERTO RICO**

Industry Committee No. 75 reports that it has completed its investigation of conditions in the Sweater and Knit Swimwear Industry in Puerto Rico and hereby submits the following report containing its findings of fact and recommendations.

In conformity with Administrative Order No. 593, published in the Federal Register August 13, 1965 (30 F.R. 10114), the committee met in executive session on November 8, 1965, and commenced a public hearing which continued on November 9 and 10. The committee took official notice of the economic report entitled "The Sweater and Knit Swimwear Industry in Puerto Rico" dated September 1965, and other supplementary data relating thereto, prepared by the Wage and Hour and Public Contracts Divisions, United States Department of Labor. Interested persons were afforded opportunity to appear before the committee. The hearing was conducted in accordance with the procedure provided in the Administrative Procedure Act (60 Stat. 237, 5 U.S.C. 1001-1011), Regulations, Part 511, Wage Order Procedure for Puerto Rico, the Virgin Islands, and American Samoa (29 CFR Part 511), and the Notice of Hearing.

The committee, in executive session on November 10, 1965, fully considered the evidence adduced at the hearing (including that officially noticed) and the parties' proposals. The committee considered competitive conditions as affected by transportation, living and produc-

tion costs, and the committee, whenever possible, gave consideration to the wages established for work of like or comparable character by collective bargaining agreements and by employers who voluntarily maintain wage standards in the industry. Having found that further investigation is not necessary, the committee, upon the entire record, makes the following findings of fact and recommendations:

### FINDINGS OF FACT

The Sweater and Knit Swimwear Industry in Puerto Rico is defined in 29 CFR 611.1 as follows:

"The manufacture of men's, women's, misses', boys', and girls' knit sweaters, shrugs, shoulderettes, boleros, and similar knitwear, and women's, misses', and girls' knit swimwear; *Provided, however,* That the industry shall not include the embroidery of any article or trimming by a crochet beading process or with bullion thread."

[2] The definition is the same as the one in the present wage order for the industry. The present applicable minimums are \$1.17 for the General Classification, effective November 3, 1963, and \$1.17 for the New Coverage Classification, effective September 3, 1965.

The committee finds that it is neither reasonable nor necessary to establish classifications in the Sweater and Knit Swimwear Industry in Puerto Rico for the purpose of fixing the highest minimum wage not in excess of the rate provided in section 6 of the Fair Labor Standards Act of 1938, as amended, that will not substantially curtail employment in such industry and will not give such industry in Puerto Rico a competitive advantage over such industry in the United States outside of Puerto Rico.

The development of the Sweater and Knit Swimwear Industry, in Puerto Rico began in 1952 with the establishment of one firm. By 1956 the industry had grown to 12 firms and by 1958, 19 firms. Since 1958, there have been from 18 to 20 firms in the industry.

For some time the industry in Puerto Rico has been producing both full-fashioned and cut-and-sewn sweaters and has been engaged in the full range of manufacturing activities and processes generally associated with the sweater industry. Other products are knitted shirts and women's knitted swimwear. Women's full-fashioned sweaters are the principal products of the industry.

Most of the firms in the industry in Puerto Rico are affiliated with mainland concerns. Several of the firms in Puerto Rico are also affiliated with other firms in the industry in Puerto Rico. A large part of the materials is received from the mainland. Virtually all output of the industry is shipped to the mainland, with most of it going to the affiliates of the Puerto Rican producers.

In 1964, shipments of sweaters from Puerto Rico to other parts of the United States amounted to approximately 386 thousand dozens, a decrease of 1.7 percent below the 393 thousand dozens shipped in 1963. The value of shipments in 1964 amounted to \$15.3 million, a decrease of 15 percent since 1963. For the first 8 months of 1965, shipments amounted to 265 thousand dozens valued at \$17.6 million. The quantity of shipments decreased during the first 8 months of 1965 compared with the same period in 1964, but the value of shipments increased from \$9.2 million to \$17.6 million, an increase of more than 90 percent. Some of the largest firms in the industry reported an increase in sales during their most recent fiscal year compared with the previous year.

A total of 2,344 covered workers were employed in the industry in Puerto Rico during a workweek in August 1965. This number of workers compares with 2,171 in August 1964 and 2,294 in August 1963. As of May 15, 1965, employment reached 2,404 as compared with 2,371 as of May 15, 1963 and 2,039 as of May 15, 1964.

As of February 15, 1965 employment was 2,204, as compared with 2,160 a year ago and 2,122 two years ago.

[3] Average straight-time hourly earnings were \$1.27 in February 1965, the same as in August 1964. Over half of the workers were paid no more than the \$1.17 wage order minimum. The average earnings by firm ranged from \$1.19 to \$1.47 in February 1965.

A labor-management agreement is in force in one firm, which employed 170 covered workers in August 1965. The agreement provided for a minimum hourly rate of \$1.27 an hour, effective April 1, 1965. Average straight-time hourly earnings of workers in this firm increased from \$1.47 in February 1965 to \$1.53 in October 1965.

Gross average hourly earnings of production workers in knit outerwear mills in the 50 States have increased from 3 to 5 cents an hour each year since 1961. At the time the \$1.17 minimum was adopted, the latest available stateside average was \$1.70 as of April 1963. In August 1965, the latest date for which data are available, gross average hourly earnings were \$1.85, an increase of 15 cents over April 1963.

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On the basis of the entire record, the committee finds that a minimum wage rate of \$1.22 an hour set forth in the recommendation below is the highest minimum wage rate which will not substantially curtail employment in the industry and will not give the industry in Puerto Rico a competitive advantage over industry in the United States outside of Puerto Rico. A minimum wage of \$1.22 an hour for the Sweater and Knit Swimwear Industry in Puerto Rico would increase the wage bill no more than 2.8 percent and would affect approximately 75 percent of the covered workers if only those workers presently earning below the minimum were considered.

### RECOMMENDATION

The committee, by a majority of the entire membership, determines that wages of not less than \$1.22 an hour shall be paid by every employer to each of his employees in the Sweater and Knit Swimwear Industry in Puerto Rico (as defined in 29 CFR 611.1), who in any workweek is engaged in commerce or the production of goods for commerce, or employed in an enterprise engaged in commerce or in the production of goods for commerce. The minimum wage has not been recommended on the basis of age or sex.

Respectfully submitted,

With respect to all findings and recommendations,

/s/ Louis Yagoda  
Louis Yagoda  
Public Member

/s/ Herbert Alper  
Herbert Alper  
Employer Member

/s/ Emile J. DeLeo  
Emile J. DeLeo  
Employee Member

/s/ Alberto E. Sanchez  
Alberto E. Sanchez  
Employee Member

/s/ Joseph Schwartz  
Joseph Schwartz  
Employee Member

[4] Dissenting as to the recommended minimum of \$1.22 an hour,

/s/ John P. Horlacher  
John P. Horlacher  
Public Member

Santurce, Puerto Rico  
November 12, 1965

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[1] Journal of Proceedings

INDUSTRY COMMITTEE NO. 75 FOR THE SWEATER  
AND KNIT SWIMWEAR INDUSTRY IN PUERTO RICO

Hearing Room, Wage and Hour Division  
Condominio San Alberto, Santurce, P. R.  
November 8, 1965

Monday, November 8, 1965

Morning Session

Executive Session of the Committee

The Committee convened at 10:30 a.m.

The Chairman, Mr. John P. Horlacher, opened the session.

Mr. Ralph S. Myers, Regional Director of the Wage and Hour Division of the U.S. Department of Labor in Santurce, Puerto Rico, welcomed the Committee and administered the oaths of office to all members. Mr. Myers also introduced the members of the staff present at the session.

The following Committee members were present:

For the Public:

John P. Horlacher Chairman  
Mariano Villaronga  
Louis Yagoda

For the Employees:

Joseph Schwartz  
Alberto E. Sanchez  
Emile J. DeLeo

For the Employers:

Herbert Alper  
Leon Atkind  
Frank M. Titelman

The following members of the Washington Office of the Wage and Hour and Public Contracts Divisions were present:

Helen M. Beck, Labor Economist  
 Anne Daniels, Stenographic Reporter  
 Richard L. Shaw, Stenographic Reporter

[2] From the Puerto Rico Office of the Solicitor:

Morton J. Marks, Regional Attorney  
 David E. Blum, Asst. Regional Attorney (Committee Counsel)

Eric Feirtag, Attorney  
 Felix V. De Jesus, Attorney  
 Freddie Franco-Garcia, Attorney

From the Puerto Rico Office of the Wage and Hour and Public Contracts Divisions:

Ralph S. Myers, Departing Regional Director  
 Joseph P. McAuliffe, Regional Director  
 Luz M. Vilarino, Asst. Regional Director  
 Ernesto Camacho, Supervisory Economist  
 Carmen M. Ortiz, Administrative Officer  
 Ralph Betancourt, Labor Economist  
 Carmen T. Ruiz, Secretary.

Attorney Blum explained their duties to the Committee members and outlined the provisions of the Fair Labor Standards Act, including its 1961 amendments. Mr. Blum also discussed the statutory criteria by which the Committee must be guided.

The following working schedule was unanimously approved: Monday through Friday, 9:00 a.m. to 12:00 noon and 1:30 to 4:30 p.m., with a flexible adjourning time in the afternoon, to finish with any witness testifying at the end of the session.

It was decided that the order of appearance would be:

1. Miss Beck

2. Mr. Cooper
3. Dr. Teper

Attorney Blum announced the receipt of the following letters, which would be brought to the attention of the Committee as evidence for what they might be worth:

1. Letter from Christiana Mills, Inc., dated October 27, 1965, signed by Arthur Dery, President.
2. Letter from Knitted Outerwear Manufacturers Association, dated October 26, 1965, signed by Max Forman, First Vice President.
3. Letter from The Standard Knitting Mills, Inc., signed by Richard A. Fishel, President.
4. Letter from United Knitwear Manufacturers League, dated October 27, 1965, signed by Abraham Kreiner, Secretary.

Mr. Schwartz, seconded by Mr. DeLeo, moved that Counsel's recommendations regarding consideration of these letters be accepted. Motion carried unanimously.

[3] Attorney Blum continued to announce the receipt of the following prehearing statements:

1. International Ladies' Garment Workers' Union. Qualified as party. Approval recommended.

Mr. Villaronga, seconded by Mr. Atkind, moved to accept Counsel's recommendation. Motion was unanimously approved.

2. Bonita, Inc.; Gordonshire Knitting Mills, Inc.; Finrico Co.; Tinto, Inc.; Malcolm Knitting Mills, Inc.; Northridge Knitting Mills, Inc.; Weststone Knitting Mills, Inc.; Midland Knitting Mills, Inc.; Finetex, Inc.; Gurabo Knitting Mills, Inc.; Glamourette Fashion Mills, Inc.; Wendy Textile Mills; Messana Dyeing & Finishing, Inc.; Puritana Mfg. Co.; Rosita Mills, Inc.; Sigo Corp.; Yauco Super Knits, Ltd.; and Textile Dye Works, Inc.

Attorney Blum discussed at length the deficiencies found on the financial statements of these companies and made the following recommendations:

1. Bonita, Inc.; Gordonshire Knitting Mills, Inc.; Finrico Co.; Tinto, Inc.; and Malcolm Knitting Mills, Inc. - Recommended that they be accepted as parties, subject to the satisfactory explanation and correction of deficiencies.

Mr. Yagoda, seconded by Mr. Atkind, moved to accept Counsel's recommendations. Motion carried unanimously.

2. Northridge Knitting Mills, Inc.; Weststone Knitting Mills, Inc.; and Midland Knitting Mills, Inc. - Qualified as parties. Approval recommended.

Mr. Alper, seconded by Mr. Sanchez, moved to accept Counsel's recommendations. Motion carried unanimously.

3. Finetex, Inc. and Gurabo Knitting Mills, Inc. - Did not qualify as parties, unless deficiencies were corrected, but could be invited as witnesses.

Mr. Schwartz, seconded by Mr. Atkind, moved that Finetex and Gurabo be excluded from this prehearing statement as parties. Motion carried unanimously.

Mr. Atkind, seconded by Mr. Villaronga, moved to invite Finetex and Gurabo as witnesses. Motion carried unanimously.

4. Puritana Mfg. Co. and Rosita Mills, Inc. - Qualified as parties. Approval recommended.

Mr. Yagoda, seconded by Mr. Alper, moved that they be accepted as parties. Motion carried unanimously.

[4] 5. Glamourette Fashion Mills, Inc.; Wendy Textile Mills; and Messana Dyeing & Finishing, Inc. - Qualified as parties. Approval recommended.

Mr. Yagoda, seconded by Mr. Titelman, moved to accept Counsel's recommendations. Motion carried 8 to 1, Mr. Schwartz voting against.

6. Sigo Corporation - Did not qualify as party. Could be invited as witness.

Mr. Schwartz, seconded by Mr. Sanchez, moved to invite Sigo Corporation as witness. Motion carried unanimously.

7. Yauco Super Knits, Ltd. - Qualified as party, subject to the correction of the deficiencies. If not, could be invited as witness.

Mr. Yagoda, seconded by Mr. Atkind, moved to invite Yauco Super Knits as witness. Motion carried 8 to 1, Mr. Titelman voting against.

8. Textile Dye Works, Inc. - Did not qualify as party. Could be invited as witness.

Mr. Titelman, seconded by Mr. Alper, moved to invite Textile Dye Works as witness. Motion carried unanimously.

The executive session recessed at 11:45 a.m.

Monday, November 8, 1965  
Afternoon Session  
Public Hearing of the Committee

The public hearing convened at 1:30 p.m., all members being present.

There were 9 persons in the audience representing industry, labor and the public.

Chairman Horlacher called the meeting to order and read the rules of procedure to be followed. He announced the decisions reached by the Committee in its executive session.

Attorney Blum submitted the following exhibits, which were marked and received in evidence:

1. Administrative Order No. 593
2. Press Release, Spanish and English, August 17, 1965
3. Press Release, Spanish and English, October 26, 1965
4. Mailing List - Economic Report
5. Mailing List - Press Releases

and for identification:

- [5] 6. Economic Report
7. Supplement to the economic report
8. Letter dated October 26, 1965 to the Wage and Hour Division from Knitted Outerwear Manufacturers Association, Pennsylvania District
9. Letter dated October 27, 1965 to the Wage and Hour Division from Christiana Mills, Inc.
10. Letter certified to on the 26th of October 1965, addressed to Industry Committee No. 75 from the Standard Knitting Mills, Inc.
11. Letter dated October 27, 1965, to the Wage and Hour Division from the United Knitwear Manufacturers League, Inc.
12. Prehearing Statement in behalf of the International Ladies' Garment Workers' Union
13. Prehearing Statement of the Sweater and Knit Swimwear Industry in Puerto Rico
14. Covering letter from Paul R. Kelberg to Office of the Solicitor of the U.S. Department of Labor dated Nov. 4, 1965, and the following financial documents: Gordonshire Knitting Mills, Inc., Statement of Income (Loss) - Andrew Hosiery Mill Division, for the year ended June 30, 1965. Gurabo Knitting Mills, Inc., Schedule of Expenses, Exhibit B-1, Year ended Dec. 31, 1964 and 1963. Finetex, Inc., Comparative Schedules of Expenses, Exhibit B-1, Year ended December 31, 1964 and 1963.

Exhibits Nos. 8 through 11 were received in evidence.

At this time, Attorney Blum announced that the following companies had qualified and been accepted as parties: International Ladies' Garment Workers' Union; Northridge Knitting Mills, Inc.; Weststone Knitting Mills, Inc.; Midland Knitting Mills, Inc.; Glamourette Fashion Mills, Inc.; Wendy Textile Mills; Messana Dyeing & Finishing, Inc.; Puritana Mfg. Co.; and Rosita Mills, Inc.;

as witnesses: Finetex, Inc.; Gurabo Knitting Mills, Inc.; Sigo Corp.; Yauco Super Knits, Ltd.; and Textile Dye Works, Inc.;

and as parties, subject to submission of necessary missing financial data: Bonita, Inc.; Gordonshire Knitting Mills, Inc.; Finrico Co.; Tinto, Inc.; and Malcolm Knitting Mills, Inc., all of which are related companies.

Chairman Horlacher announced the order of appearance to be followed:

Miss Helen M. Beck, Labor Economist, Washington, D.C., after being sworn by the Chairman, discussed the Economic Report for the Sweater and Knit Swimwear Industry in Puerto Rico. She offered Exhibits Nos. 6 and 7, which were received in evidence and submitted Exhibit No. 15 - Supplementary data to the economic report - which was marked and received in evidence.

Mr. Mitchell J. Cooper, Attorney appearing on behalf of Bonita, Inc. and 17 other companies named in the pre-hearing statement, after being sworn by the Chairman, testified on behalf of these firms. Mr. Cooper submitted the following exhibits, which were marked for identification:

[6] 16. Covering letter from Arthur Andersen and Company to Paul R. Kelberg dated November 4, 1965, and the supplementary financial statements for June 30, 1964, together with an unqualified opinion for the following companies: Gordonshire Knitting Mills, Inc., Tinto, Inc., Finrico Company, Bonita, Inc., and Malcolm Knitting Mills, Inc.

17. Letter dated November 2, 1965, to Paul R. Kelberg from the Office of the Solicitor, U.S. Department of Labor, Santurce, P.R.

The public hearing recessed at 5:00 p.m.

Tuesday, November 9, 1965

Morning Session

Executive Session of the Committee

The Committee reconvened at 9:00 a.m., all members being present.

Chairman Horlacher announced that the purpose of this executive session was to decide on final admission of the Gordonshire group companies as parties to the proceedings.

After discussion, Mr. Schwartz, seconded by Mr. Titelman, moved that the Gordonshire group companies, namely, Bonita, Inc.; Gordonshire Knitting Mills, Inc.; Finrico Co.; Tinto, Inc.; and Malcolm Knitting Mills, Inc., be accepted as parties. Motion carried 7 to 2, Messrs. Sanchez and DeLeo voting against.

The executive session recessed at 9:10 a.m., and the Committee immediately resolved itself into

Public Hearing

All members were present.

There were 6 persons in the audience, representing industry, labor and the public.

Chairman Horlacher announced the admission of the Gordonshire group companies as parties to the proceedings and Dr. Lazare Teper, representing International Ladies' Garment Workers' Union, took exception to the Committee's decision.

Mr. Cooper continued his testimony and submitted Exhibits Nos. 13 and 14, which were received in evidence.

The public hearing recessed at 12:05 p.m.

Tuesday, November 9, 1965  
Afternoon Session  
Public Hearing of the Committee

The Committee reconvened at 1:35 p.m., all members being present.

[7] There were 6 persons in the audience representing industry, labor and public.

Mr. Cooper continued his testimony and submitted Exhibits Nos. 16 and 17, which were received in evidence. He also submitted Exhibit No. 18 - 1963-1964 Edition, Annual Statistical Report of EDA Manufacturing Plants - which was marked and received in evidence.

Miss Beck testified regarding additional information requested by the members. She submitted Exhibit No. 19 - Supplementary data to the economic report - which was marked and received in evidence.

The public hearing recessed at 4:35 p.m.

Wednesday, November 10, 1965  
Morning Session  
Public Hearing of the Committee

The Committee reconvened at 9:00 a.m., all members being present.

There were 6 persons in the public representing industry, labor and the public.

Dr. Lazare Teper, Director of Research of ILGWU, after being sworn by the Chairman, testified on behalf of that union. Dr. Teper submitted Exhibit No. 12, which was received in evidence and the following exhibits, which were marked and received in evidence:

20. Article from Women's Wear Daily, March 10, 1965, headed: U. S. Sweater Firms Geared for Big Season

21. Article from Women's Wear Daily, July 13, 1965

22. Tabulation: Shipping Weights of Sweaters, Puerto Rico to the United States

23. Tabulation: Freight Costs per Hour of Labor, Sweater and Knit Swimwear Industry, Puerto Rico

24. Letter to Dr. Lazare Teper dated August 24, 1964, from the Administrator, Wage and Hour and Public Contracts Divisions, U. S. Department of Labor.

Mr. Cooper submitted Exhibit No. 25 - Covering letter from Northridge Knitting Mills, Inc., dated July 30, 1965, to Messrs. Kelberg and Dorff, enclosing a Shipper's Export Declaration - which was marked and received in evidence.

The public hearing recessed at 2:00 p.m.

Wednesday, November 10, 1965

Afternoon Session

Executive Session of the Committee

The Committee reconvened at 3:30 p.m., all members being present.

The members met in group caucuses until 6:15 p.m., when they reassembled into one single group.

[8] The Chairman announced that they were ready to vote.

Mr. Schwartz, seconded by Mr. Alper, moved that a rate of \$1.25 be recommended for the Sweater and Knit Swimwear Industry in Puerto Rico. Motion lost 4 to 5, Mr. Alper and the Labor members voting in favor.

Mr. Atkind, seconded by Mr. Titelman, moved that the Committee recommend a rate of \$1.17 for the Sweater and Knit Swimwear Industry in Puerto Rico. Motion lost 3 to 6, Messrs. Titelman and Atkind and Chairman Horlacher voting in favor.

Mr. Yagoda, seconded by Mr. Villaronga, moved that the Committee recommend a rate of \$1.20 for the Sweater and Knit Swimwear Industry in Puerto Rico.

Motion lost 2 to 4, with 3 abstentions, Messrs. Yagoda and Villaronga voting in favor, the Labor members abstaining, and Chairman Horlacher and Messrs. Alper, Titelman and Atkind against.

At 6:20 p.m. they again met in group caucuses, until 6:40 p.m., when they reassembled in one single group.

Mr. Yagoda, seconded by Mr. Villaronga, moved that the Committee recommend a rate of \$1.20 for the Sweater and Knit Swimwear Industry in Puerto Rico. Motion lost 3 to 4, with 2 abstentions, Chairman Horlacher and Messrs. Atkind, Titelman and Sanchez against, Messrs. Schwartz and DeLeo abstaining, and Messrs. Alper, Villaronga and Yagoda in favor.

Mr. Titelman started to make a motion, but deferred to Mr. Yagoda, so that he could make one instead.

Mr. Yagoda, seconded by Mr. Villaronga, moved that the Committee recommend a rate of \$1.20 for the Sweater and Knit Swimwear Industry in Puerto Rico. Motion carried 5 to 4, Messrs. Alper, Villaronga, Yagoda, Schwartz and Sanchez in favor and Chairman Horlacher and Messrs. Titelman, Atkind and DeLeo against.

Messrs. Titelman and Atkind, strongly protested the fact that this Committee had been appointed to review the Sweater and Knit Swimwear Industry in Puerto Rico and expressed their views to the effect that it was unjustified. They also informed the Committee that they intended to file a dissenting opinion.

Mr. DeLeo also expressed his intention to file a dissenting opinion.

The Committee decided to meet again at 10:30 a.m. on Friday, November 12th, to discuss and consider approval of the Report, Findings of Fact, and Recommendations.

The executive session recessed at 7:05 p.m.

Friday, November 12, 1965  
Executive Session of the Committee

The Committee assembled at 10:30 a.m.

The following members were present:

[9] John P. Horlacher  
Louis Yagoda  
Joseph Schwartz  
Alberto E. Sanchez  
Emile J. DeLeo  
Herbert Alper

Awaiting the arrival of the remaining members, the Committee did not convene until 12:40 p.m.

Mr. Villaronga was called at approximately 10:30 a.m. and stated that he was delayed for personal reasons, but would come in as soon as possible.

Efforts made by the staff of the Office of the Solicitor to locate Mr. Titelman disclosed that he was in New York and conversations were held with him there during the morning and later in the day informing him of the importance of the impending session. Mr. Atkind was also contacted during the morning at his plant in Bayamon and notified of the importance of his presence at the session.

After the arrival of Mr. Villaronga, the Committee convened at 12:40 p.m. and met as a group.

Shortly after the opening of the session, Mr. Villaronga left, stating later that he felt ill, and did not return to the session of the Committee.

The Chairman presented the draft of the Report, Findings of Fact and Recommendations for the consideration of the Committee and asked for suggestions as to contents of the Report.

Discussion of the Report was begun and several changes

in the text were suggested and approved by the members.

Mr. Yagoda presented his views on the vote taken and the recommendation made on Wednesday, and moved that the Report be modified so as to increase the recommended wage rate to \$1.22. Mr. Schwartz seconded the motion. The Chairman stated that the motion was really a motion to reconsider the determination of the wage rate by the Committee. He ruled that this motion was inappropriate and improper in view of the fact that the present meeting was convened for the purpose of reviewing the draft of the Report, modifying it, approving it, and signing it, and not for the purpose of reconsidering the wage rate voted on in the prior session. He cited Section 511.12(b).

The Chairman ruled the motion out of order and stated that in the absence of a challenge the ruling would stand.

Mr. Schwartz thereupon challenged the ruling of the chair and asked for advice of counsel.

Attorney Blum stated that the absence of three Committee members was of importance, since the Department would view it as desirable that all members of the Committee be [10] given an opportunity to make comments on a situation such as this. He also cited Sections 511.16 and 511.9 of the Regulations, pointing out that they obligated the Committee to make and approve a final report and that any such report must be approved by a majority of the Committee, and noted that prior to this final act, the procedures of the Committee in this case would appear to be primarily governed by Section 511.9. He stated, however, that he could not give final advice before consultation.

Discussion of the Committee then went off the record.

At 2:30 p.m. the Committee reconvened on the record.

Mr. Yagoda moved that under 511.12(b), this Committee be adjourned for the purpose of reconvening as soon as practicable with a fuller representation. This motion lost for lack of a second.

The Committee discussed Mr. Schwartz' challenge of the Chairman's ruling that Mr. Yagoda's prior motion was not in order.

Attorney Blum reported on the efforts made to contact members not present. Mr. Atkind had advised Wednesday that he would be present on Friday to sign the Report and on being contacted today did not advise otherwise.

Mr. Titelman was called in New York and had returned the call stating that it would be impossible for him to be here within the next two or three days and that he regarded his work on the Committee as completed. He would not comment on whether he could return at a later date.

Regional Attorney Marks, at the request of the Committee, commented on the importance of having complete attendance of the Committee. He stated that the office of the Solicitor in Washington had been contacted. Whereas the Regulations indicate that the Committee could operate through a quorum, he advised that all members be given ample notice and opportunity to be present for the deliberations. He reported that he had heard Mr. Titelman ask Mr. Ralph Myers on Wednesday (November 10) whether it would be necessary for him to be present on Friday and that Mr. Myers had strongly advised him to be present, or otherwise, he would act at his own peril.

Mr. Marks individually canvassed the Committee members who were present to ascertain how many would sign the Report agreeing to the \$1.20 rate. None of the members present indicated that they would do so. It is to be noted that, neither the Chairman, nor Mr. De-

Leo had agreed to the \$1.20 rate at the Wednesday session. Mr. Marks stressed that the Department would especially like to see a full complement of the Committee in these deliberations before any further action was taken. He also cautioned about the possible impediment presented by Section 511.12(b). He indicated that, figuratively speaking, the Department would like to "dot every 'i' and cross every 't'".

A vote was taken on Mr. Schwartz' challenge of the Chairman's ruling. The vote was five to one in favor of overruling the Chairman's ruling that Mr. Yagoda's motion was out of order.

[11] A vote was then taken on Mr. Yagoda's motion to change the wage rate recommendation to \$1.22 an hour. Five members voted in favor and the Chairman voted against.

Mr. Schwartz moved that the Report be adopted as modified and Mr. DeLeo seconded the motion. All six members present voted for adoption of the Report, with the Chairman dissenting only as to the wage recommendation. All six members present signed the Report with the Chairman signing the Report, but dissenting as to the wage recommendation.

The Committee adjourned sine die at 3:00 p.m.

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UNITED STATES DEPARTMENT OF LABOR  
Wage and Hour and Public Contracts Division

EXECUTIVE SESSION

of

SPECIAL INDUSTRY COMMITTEE NO. 75

for the

SWEATER AND KNIT SWIMWEAR INDUSTRY  
IN PUERTO RICO

DATE: November 12, 1965

PLACE: Committee Hearing  
Room, Wage and Hour  
Division, Condominio  
San Alberto, Santurce,  
Puerto Rico

Reporters:

Richard L. Shaw  
Anne Daniels

[1]

EXECUTIVE SESSION

November 12, 1965

11:00 A.M.

CHAIRMAN HORLACHER: The committee will be in executive session.

The committee has before it, in accordance with its understanding at the time it adjourned on Wednesday, a draft: Report, Findings of Fact, and Recommendations of Industry Committee No. 75 for the Sweater and Knit Swimwear Industry in Puerto Rico. A draft of this report has been made available to the members of the committee for consideration.

The Chair will entertain any suggestions anyone has as to the contents of the report.

MR. SCHWARTZ: Mr. Chairman, on the contents of the report, may I recommend some minor changes in the report as prepared? On page 3, on the third line preceding the word "employment" I would make the fol-

lowing suggestion: "As of May 15, 1965, employment reached . . ." The rest is to be stricken out and the following is to be included: "2,404 as compared with 2,371 as of May 15, 1963, and 2,039 as of May 15, 1964."

Then I would like to suggest, Mr. Chairman, perhaps you will find a space, a little, in the margin for another group of words, as follows: "As of February 15, 1965, employment was 2,204 as compared with 2,601 a year back."

CHAIRMAN HORLACHER: "A year back," or "ago"?

MR. SCHWARTZ: "Ago." Thank you. "and 2,122 two years ago." That would be one change.

MISS BECK: I just checked that figure now. I believe [2] that 2,601 is 2,160, according to Exhibit 7. I just noticed that, Table 9.

MR. SCHWARTZ: Let's take Miss Beck's correction. Say that again, please.

MISS BECK: A year back — you mean, by that, February 1964, don't you?

MR. SCHWARTZ: That is right.

MISS BECK: That is 2,160.

MR. SCHWARTZ: I transposed my figures. Thank you.

Then also, on page 3, I guess it is the fourth paragraph from the top, also starting with the third line, cross out "In 1964, the average was \$1.78 an hour," and substitute the following: "At the time the \$1.17 minimum was adopted the latest available stateside average was \$1.70 as of April 1963."

Then, in the same paragraph, the bottom line would therefore change. Where it says "6 cents," make it 15. Then change August 1964 to April 1963.

CHAIRMAN HORLACHER: Does that finish the suggested changes?

MR. SCHWARTZ: Yes, sir.

CHAIRMAN HORLACHER: You have heard these suggestions for modifications in the language on page 3 of the draft report. What is your pleasure about these modifications?

MR. YAGODA: Mr. Chairman, I would like to get the economist's verification of the figures before I add on that.

MISS BECK: I verified the figures.

[3] CHAIRMAN HORLACHER: Unless there is objection to the changes being made, the Chair will rule that they are agreeable to the committee and can be incorporated into the report.

There being no objection, the committee adopts them.

MR. YAGODA: Mr. Chairman, I would like to move for a change in the recommendation so that in every place where it appears that the minimum wage rate of \$1.20 an hour is recommended, there be substituted the figure of \$1.22 an hour.

Will you permit me, Mr. Chairman, to supplement this with a brief explanation of why I am so moving?

CHAIRMAN HORLACHER: Proceed with your explanation.

MR. YAGODA: I agreed at our last meeting with the majority to propose \$1.20 per hour. I have since had the benefit of a more careful exploration of the material and some of the influential and significant characteristics of the material, that is, influential and significant in making up my mind, which has led me to conclude that my position is one favoring \$1.22 an hour, rather than \$1.20 an hour.

I will say that the explanation for this change is, in part, one having to do with the processes by which we do our deliberations. The opportunity for more leisurely consideration is necessary for me in making decisions of this kind, and I feel now that I did not have the benefit of what I need by way of analysis, consideration and conclusion, in terms of time. This is no reflection on anybody. The Chairman has been exemplary in terms of allowing as much time [4] as was needed within the confines of the usual pattern of time used. But if there is any reflection on anybody, it reflects on the slowness of my thought processes.

I now feel I have reached a more final basis for my thinking, and I would be less than honest with myself and with the mandate which is conferred on me as a member of this committee if I did not make the change to the figure which is one that I now support with conviction.

I was influenced very heavily by my realization that from August 1964 until August 1965 there was a 6 cents increase stateside in the average wage. Keeping the respective Puerto Rican positions in parallel it would no more than justify that there be at least the kind of an increase which I am now recommending.

In addition to that, we have here, right on the island itself, a plant which is under a union contract and which is paying an average wage of \$1.53 per hour, as against \$1.27 per hour prevailing in the rest of the Puerto Rican industry, in addition to some union benefits by way of health and welfare funds, which are not prevailing elsewhere.

The stateside minimum under union contracts is \$1.40, as compared with \$1.17 here.

These are very significant factors weighing the situation in terms of our mandate to move as rapidly as possible toward the statutory minimum without causing a competitive advantage to industry in Puerto Rico or in the Virgin Islands over industry in the United States outside of those places, and having due regard to economic [5] and competitive conditions which will not substantially curtail employment in the industry.

I am satisfied, on the basis of my analysis of all the figures that have been given here, the health of the industry -- which to my mind has shown improvement, in spite of the fact that there are many question marks in the figures, which we have not had the advantage of being able to resolve. My conclusion is that I must find myself moving for a recommendation of \$1.22 per hour.

MR. SANCHEZ: I second the motion.

CHAIRMAN HORLACHER: The motion that has been made and seconded, in the opinion of the Chair, is a motion not merely to change the draft of the report before

the committee, which draft was drawn up on the basis of the committee's action on Wednesday, but is in essence a motion to reconsider the determination of the wage by this committee. Construing the motion to be this, that the committee under this motion is asked to reconsider the determination made on Wednesday, it is the opinion of the Chair, and the Chair so rules, that this motion is inappropriate.

MR. ALPER: Pardon. I did not hear that.

CHAIRMAN HORLACHER: This motion is inappropriate and improper, in view of the fact that today's meeting of the committee was convened for the purpose of reviewing this draft report and making such modifications in it as seem appropriate and signing it, and not for the purpose of any reconsideration of the wage which was fixed by action of the committee on Wednesday.

[6] In this connection I call the attention of the committee to the regulations, Title 29 of the Code of Federal Regulations, Section 511, or Part 511. Section 511.12(b) reads as follows:

"A committee may adjourn its meeting or hearing, or both, from time to time, and meet again, at hearing or otherwise, pursuant to the terms of adjournment, or on call of its chairman or the Administrator."

It is my interpretation that under this paragraph of the regulations as applied to the facts, that today's meeting, if it were to consider the question of re-determination, if it were to reopen the question of the wage determination, would not be a meeting pursuant to the terms of adjournment, which were that the committee would adjourn and sit today for purposes of the formality of approving and signing the report, and that the meeting for this purpose of reconsidering the wage determination is not being held for that purpose, on the call of its chairman or the Administrator.

The Chair would like to point out that although there were seven members of the committee present when the session began, one of the public members, Mr. Villa-

ronga, has left the room because of illness, and that two of the employer members of the committee were not present at the beginning of the meeting and are, of course, not present now, Mr. Titelman and Mr. Atkind.

The Chair would like to observe further that he would not in any case wish to assume sole responsibility for the procedural modification in proceedings of this committee as represented by the motion.

[7] My ruling on the motion -- maybe I am wrong about this, but I think if I were to rule the motion in order I would assume the responsibility of determining procedurally that this was correct, that it would be appropriate for this type of motion to be put and acted upon. In view of that judgment, I would not wish to accept this responsibility for what seems to me to be a quite unusual procedure. Hence, my opinion is that the motion should be ruled out of order, inappropriate, and improper. And, of course, as in any other ruling by the Chair under the applicable regulations, my ruling can be tested. It can be challenged, and if a majority is of the opinion that the ruling is erroneous, it can be upset. In the absence of a challenge on the motion, or a vote, rather, indicating that the Chair is in error, the motion cannot be put.

MR. ALPER: Mr. Chairman, in the light of the objections you have raised, it seems you have raised a question about the legal propriety of this hearing. Would it be proper at this point to ask counsel as to whether or not these hearings are justified?

CHAIRMAN HORLACHER: I think it is perfectly proper. If the committee wishes to hear from counsel, by all means it should hear from counsel.

MR. BLUM: Mr. Chairman, I would request that this motion be put to a vote.

CHAIRMAN HORLACHER: The Chair has ruled that the motion is out of order, which means it can't be put to a vote.

[8] MR. BLUM: Excuse me. I didn't mean to imply that. I meant your ruling, as well as the motion, or your ruling, as such.

Unless you feel it absolutely necessary, I would defer any advice I might give until such time as there is a vote.

MR. ALPER: It seems important at this time, in view of the ruling that it is not proper.

MR. SCHWARTZ: Mr. Chairman, may I?

CHAIRMAN HORLACHER: The Chair recognizes Mr. Schwartz.

MR. SCHWARTZ: The Chair has ruled that the motion made by Mr. Yagoda is out of order; is that correct?

CHAIRMAN HORLACHER: Yes.

MR. SCHWARTZ: I would appeal from the ruling of the Chair and ask the advice of the Chair or counsel as to just how we proceed in working on an appeal against a ruling of the Chair.

MR. BLUM: I can give you advice on appeal against the ruling of the Chair.

The Regulations, Section 511.9, state with respect to this question as follows:

"Except as otherwise provided in this part, the chairman of the industry committee or subcommittee may make other decisions for the committee or subcommittee, but each such decision shall be subject to approval of a majority of the members present if any member objects."

Shall I read that last phrase again? "Each such decision" --

MR. YAGODA: Where are you reading from?

[9] MR. BLUM: 511.9. Regulations 29 CFR 511.

"Each such decision" -- to repeat -- "shall be subject to approval of a majority of the members present if any member objects."

That is the basis for appealing a decision of the Chair, Mr. Schwartz.

CHAIRMAN HORLACHER: The procedure, sir, I believe is a simple one, by referring your appeal to a vote of the committee.

MR. SCHWARTZ: I wish the Chair would do so, please.

CHAIRMAN HORLACHER: I will, of course, do this.

There is a member of the committee whom I interpret as asking for legal advice before the vote on the challenge of the Chair's ruling is taken. Is this a correct interpretation?

MR. ALPER: That is right. I should like to know whether we should proceed or stop.

CHAIRMAN HORLACHER: I think he is entitled to whatever advice you might have before the vote on the ruling of the Chair is taken.

MR. SCHWARTZ: Also, on the record, Mr. Chairman, I am not interested in technicalities, except to be guided in terms of procedure so we can clarify the thinking of the membership.

CHAIRMAN HORLACHER: The Chair appreciates this.

In view of the request of Mr. Alper for such guidance as counsel may wish to provide, it seems appropriate to ask counsel to comment at this point.

MR. BLUM: I believe that you want me to comment on your interpretation of 511.12(b) of the Regulations, which states:

[10] "A committee may adjourn its meeting or hearing, or both, from time to time, and meet again, at hearing or otherwise, pursuant to the terms of adjournment, or on call of its chairman or the Administrator."

It is my understanding, Mr. Chairman, that your interpretation of this language, and on the basis of which you have ruled Mr. Yagoda's motion out of order, is that you regard the language pursuant to the terms of the adjournment to bind the committee in its action to that purpose, or to the specific purpose described prior to the adjournment.

We are not in a position -- that is, the Office of the Solicitor. We have given this question careful consideration. It is quite important to the interpretation of the

regulations, to the issue involved here, and to the unusual problems that this situation presents. We believe an answer to this question would be very important to a determination of this committee and to the industry committee hearing procedures generally, and we would feel it would be necessary for us, in order to give the committee the full benefit of our advice, to obtain a more definitive answer as to the correct and proper interpretation of this section and of the other relevant and pertinent portions of the regulations in the light of the entire circumstances of this situation.

I think it appropriate for me to point out several other things in dealing with this situation.

One, the absence, which you have pointed out, of two employer members of the committee and the absence of one public member of [11] the committee, who, in light of the unusual nature of this situation, might well have comments to make and might be prevented from making comments which they would deem important if we did not allow them an opportunity to be here.

I am simply pointing that out for the benefit of the Chair and the committee.

I think it also important to point out that there are other relevant sections of the regulations which would bear on this question, the other relevant sections of the regulations being Part 511.16 and 511.9.

I would like, with the Chair's permission, to read from those sections.

Section 511.16 deals with the obligation of this committee to file a report. It states that:

"Promptly after receipt of submissions under Section 511.15, the committee or subcommittee will resolve the issues before it and prepare a report containing its findings of fact and recommendations. The report shall contain the committee's or the subcommittee's finding and conclusions as well as the reasons or basis therefor upon all the material issues of fact, law or discretion presented on the record. When a committee, acting through a quorum, has presided at the reception of evi-

dence, this report shall be its final report on the matters referred to it."

[12] MR. SCHWARTZ: Pardon me, Mr. Chairman. May I just ask counsel a question about some of the language? If you want me to hold it, I will hold it.

CHAIRMAN HORLACHER: Let's let him finish, Mr. Schwartz, and then ask questions.

MR. BLUM: I would like to place these relevant sections on the record. I am doing this, Mr. Schwartz, simply to point out what are the sections of the regulations that might be relevant to the circumstances here and to any ultimate decision taken, after first advising the committee that we are not prepared to give a final interpretation of the matters in 511.12.

The next portion I read is not directly pertinent to the question involved, but I think it has some relevance.

CHAIRMAN HORLACHER: What are you reading?

MR. BLUM: I am continuing to read Section 511.16:

"Where, however, a subcommittee has presided at the reception of evidence, this report shall be an initial report, and the committee shall meet thereafter to review the report and rule on exceptions in its final report. Where the committee presides at the reception of evidence and proceeds to final decision every party shall be regarded as having objected to any wage rate or classification at variance with any he proposed in his prehearing statement unless he accepted such a rate of classification in any submittal made pursuant to Section 511.15."

[13] The portion I read now, I think, is more relevant to the situation at hand:

"A copy of the report shall be signed by each member of the committee who approves it, either by a meeting of the committee or by circulation of one or more copies among the members of the committee. At any time within three days after the committee report is signed by those who approve it, members dissenting therefrom may collectively or individually submit signed reports stating the reasons for their dissent."

I think that section delineates the obligation of the committee to prepare a report.

Section 511.9 states:

"Two-thirds of the members of an industry committee shall constitute a quorum. Approval by a majority of all of the members of an industry committee or subcommittee shall be required for its report."

I repeat:

"Approval by a majority of all the members of an industry committee or subcommittee shall be required for its report."

"Except as otherwise provided in this part, the chairman of the industry committee or subcommittee may make other decisions for the committee or subcommittee, but each such decision shall be subject to approval of a majority of the members present if any member objects."

[14] Now, I think, in view of the clear language of the regulations, that we can say, at least, that the committee can only complete its assigned duty by the preparation and filing of a report approved and signed by a majority of the members of the committee, and that its action in setting wage rates can only be finally recorded and effected in this manner.

Now, assuming that the committee has not filed a report signed by a majority of the members, the question is raised as to whether the committee has completed its duty and as to what other action the committee can take or may take in the absence of this final action.

Without making a final decision on this question, and without giving final advice, it would appear, at least, that the committee, having not taken final action required by it, is still subject to the regulations and may act in accordance with the requirements of the regulations, that it may act in the presence of a quorum and subject to the approval of the majority of the members if any member objects to a decision of the Chairman.

As I have said, I am not in a position to give final authority or final interpretation of this question until

we receive further comment from the Office of the Solicitor of the Labor Department. I do think that the matters I have pointed out are equally pertinent to the question or to the matter at hand as the portions of the regulations referred to by the Chairman.

If I have understood Mr. Yagoda correctly, he would not be willing to sign this report as written and presented to the committee. [15] I think the question would then arise as to whether the committee had a majority of members available to sign the report, and as to what the application of the regulations would then be.

I again refer to the absence of three members of the committee as significant in making such determination, and that they too may have comments to make. With respect to the matter of the absent committee people, as I said, they may have important comments to make on this matter. It is the Department's position that the committee should give consideration to giving full opportunity and notice for them to appear so that they may have a chance, a fair chance, to make such comment as they want to make.

MR. YAGODA: Mr. Chairman, may I ask that we go off the record, with assurance from me to the Chair that anything that occurs of a substantive nature which requires putting on the record will then be repeated by me? May I, under those circumstances, have permission for us to go off the record at this point?

CHAIRMAN HORLACHER: Yes. Off the record.  
(Discussion off the record.)

CHAIRMAN HORLACHER: On the record.

Off the record, Mr. Yagoda has indicated a desire to make a motion for overruling the Chairman, which, of course, is always in order.

MR. YAGODA: Mr. Chairman, I make this motion subject to an assurance from you that I have not lost my procedural rights.

[16] I am moving to overrule the decision of the Chair.

MR. SCHWARTZ: This motion would come up immediately after the attorneys would have answered the comment of Mr. Alper. So that is in order.

CHAIRMAN HORLACHER: No problem.

MR. YAGODA: Then I move, Mr. Chairman, acting under 511.12(b) of the regulations that this committee have an interim adjournment for the purpose of being reconvened as soon as practically possible with the full participation of the committee to conclude the business before us.

CHAIRMAN HORLACHER: Does the Chair hear a second to the motion?

(No response)

CHAIRMAN HORLACHER: The Chair hears no second and declares the motion lost for want of a second.

MR. YAGODA: I rise again to another motion.

CHAIRMAN HORLACHER: There is still pending before the committee the challenge of the Chair's ruling which held that the motion made by Mr. Yagoda was not in order. At the time that we went off the record there was some indication that one of the members of the committee might like to ask the advice or guidance of either committee counsel or the Regional Attorney, which might be provided before a vote was taken on the challenge. This would appear to be the appropriate time for such commentary, if any is to be made.

MR. BLUM: Mr. Chairman, the Regional Attorney, Mr. Morton Marks, will speak shortly. I would like, first, to comment on the [17] efforts that we have made to contact those members of the committee who are not presently here.

With respect to Mr. Villaronga, as you know, he is presently ill but was here this morning.

Mr. Atkind advised us at the close of the session yesterday that he would be here on Friday to sign the report. He was contacted again today and advised of the situation that presently exists. He did not advise us that he would not be here and therefore, on the basis of his statement Wednesday, we would normally expect him.

With respect to Mr. Titelman, he was called in New York. He returned the call and advised us that it would be impossible, due to his commitments, for him to be here within the next two to three days, and further, that he regarded his work on the committee as finished. He did not comment on the possibility of whether he might return at some date not in the immediate future, if the committee were reconvened at such date.

I would like now to have the Regional Attorney, Mr. Marks, make his comments on the question of the importance of having a complete complement of the membership of the committee here.

MR. MARKS: I think the committee is fully aware of the seriousness and the importance of what is transpiring at this time. As a result, I have been in contact with the National Office and I have spoken to the Solicitor of Labor, Mr. Donahue.

While I think the members of the committee are aware of the fact that Section 511.12 of the regulations indicates that the [18] committee can operate through a quorum -- a quorum, of course, would consist of six members of the committee -- there would seem to be a great deal to be said in the interest of equity if all members of the committee were to be given ample notice and opportunity to be present for the continued deliberations of this committee.

With respect to Mr. Titelman, I would like to make a statement at this time as to a conversation which I heard late Wednesday between Mr. Titelman and Mr. Ralph Myers. The gist of it was: Mr. Titelman asked Mr. Myers if it would be necessary for Mr. Titelman to be here on Friday, namely, today. Mr. Myers' reply was that he strongly advised Mr. Titelman to be here, and that if he was not here he proceeded at his peril.

As the counsel for the committee pointed out previously, there are several provisions of the regulations which are particularly pertinent to any action which the committee will take at this time or at some future time, in the event the committee does not terminate its busi-

ness today. Mr. Blum read in its entirety, I believe, Section 511.16, which indicates the report of the committee:

"... shall contain the committee's or subcommittee's findings and conclusions as well as the reasons or basis therefor upon all the material issues of fact, law, or discretion presented on the record. When a committee, acting through a quorum, has presided at the reception of the evidence, this report shall be its final report on the matters referred to it."

[19] In addition, I believe Mr. Blum also referred to Section 511.9, which indicates that:

"Two-thirds of the members of an industry committee shall constitute a quorum. Approval by a majority of all of the members of an industry committee or subcommittee shall be required for its report."

It also goes on to say that:

"Except as otherwise provided in this part, the chairman of the industry committee or subcommittee may make other decisions for the committee or subcommittee, but each such decision shall be subject to approval of a majority of the members present if any member objects."

There is one other paragraph here, and I have been informed by Mr. Kelberg to the effect that he relies on this, which is Section 511.12(b). This reads as follows:

"A committee may adjourn its meeting or hearing, or both, from time to time, and meet again, at hearing or otherwise, pursuant to the terms of adjournment, or on call of its chairman or the Administrator."

Attorney Kelberg's position is that the words "pursuant to the terms of adjournment" would preclude the committee from any further consideration of a possible wage rate.

However, I think that we are now left in a situation where we will not find a majority of the committee signing a report calling for a wage rate of \$1.20. Am I correct on that?

Is that correct, Mr. Yagoda?

MR. YAGODA: That is true of me.

[20] MR. SCHWARTZ: It is equally true of myself, Mr. Counsellor. I will not sign the report for \$1.20.

MR. MARKS: May I have the comments of the members of the committee, please?

CHAIRMAN HORLACHER: Would you identify yourself?

MR. SCHWARTZ: I beg your pardon. My name is Joseph Schwartz.

MR. SANCHEZ: My name is Alberto E. Sanchez. I will not sign the report with \$1.20.

MR. ALPER: I did not vote for it.

MR. MARKS: May I have any comments from you, Mr. DeLeo, that you would like to make at this time?

MR. DELEO: Other than the fact that I wish we would proceed with the motion made by Mr. Joe Schwartz.

MR. ALPER: I have no comment to make. I would not sign the report.

MR. MARKS: You would not sign the report, you say, with the \$1.20 rate?

MR. ALPER: No.

MR. MARKS: I can only conclude my comments at this time by saying that the Department would very much like to see a full complement of the committee present for the continuation of deliberations and voting.

These are our strongest recommendations to the committee.

Thank you very much.

[21] CHAIRMAN HORLACHER: Mr. Marks, it is the Chair's impression that what has been done in telephoning Mr. Titelman and Mr. Atkind does not, in the opinion of the Regional Attorney, constitute due notice and adequate opportunity for them to participate in this meeting. I think it is rather important that the counsel indicate whether this impression is correct or not.

MR. MARKS: Mr. Chairman, as I say, I do not believe that the regulations would require them to be here.

However, it is our honest and earnest desire to dot every "T" and cross every "T", so that in the event that the action of this committee is appealed by any of the parties to the appropriate United States Court of Appeals, that this committee will have shown by its action that it has done not just everything that is required of it by the regulations, but has made every effort whatsoever to comply, has made every effort whatsoever to have everybody present here.

I believe that Mr. Blum, who is the committee counsel, can further enlighten the committee as to his conversation with Mr. Atkind.

Didn't Mr. Atkind indicate he was tied up, if I am not mistaken?

MR. BLUM: No, Mr. Atkind did not indicate that to me in his conversation.

MR. SCHWARTZ: May I interrupt, Mr. Chairman?

CHAIRMAN HORLACHER: Yes.

MR. SCHWARTZ: Would counsel care to tell the committee where Mr. Atkind was located or how he was reached?

[22] MR. BLUM: Yes, that would be pertinent, Mr. Schwartz.

Mr. Atkind is in Puerto Rico. He was reached at Rosita Mills, which I understand he is an executive of. As I say, Wednesday he advised us that he would be here some time Friday to complete the business that remained to be completed. The reason that he could not be here at 10:30 Friday, that is, today, was that he had business. But he did indicate that he would be here today.

Now, in my conversation with him today, when he was contacted at Rosita Mills, Bayamon, Puerto Rico, which is within the greater San Juan area, I simply advised him of the situation that took place. He did not indicate to me that he would not be here today. He did not tell me that the pressure of business would prevent him from being here today. He did not advise me otherwise

that he would not be here today. I must say he did not advise me positively that he would be here today. But he had so advised me previously.

MR. ALPER: Mr. Chairman, on that question, I was unaware of the conversation that Mr. Titelman had with Mr. Myers. I was not aware of the fact that it was indicated that it was most important that he be present, that he might take the consequences should anything arise during his absence. This comes to me for the first time.

CHAIRMAN HORLACHER: You are referring to the conversation between Mr. Titelman and the Regional Director?

MR. ALPER: That is right. I was not aware of the fact that he was expressly told that it was most important that he arrive. I was [23] not aware of the fact that they were able to reach Mr. Atkind, who is on the island since he is most vitally concerned, and yet he has not seen fit to make himself present to at least state his position. It seems to me a rather positive act of omission.

While I was most interested in seeing that they were here to state their case, there is no question now that at least one of the members has had more than ample opportunity to make his way to this hearing. Because, while we started at 10:30, it is now after three and we have not as yet heard from him or received any indication of whether or not he intends to come. As a result, while we are all anxious to see that he has his day in court, he has made no attempt to take advantage of that right or privilege.

CHAIRMAN HORLACHER: The Chair has intended to state for the record that the committee was scheduled to meet this morning at 10:30, that it did, in fact, convene somewhat after that hour, that it is now after 3 o'clock. The intervening time has been utilized for the purpose of enabling counsel to contact absent members of the committee and to obtain from officials in the Wage and Hour Division office in Washington any further advice and information.

MR. BLUM: The Office of the Solicitor.

CHAIRMAN HORLACHER: The Office of the Solicitor, yes.

The committee is now proceeding at this late hour, and in view of certain imperative commitments which members of the committee have, in the judgment of the Chair, an opportunity has been afforded for such outside contacts that seem indicated under the circumstances.

[24] Does anybody else have anything to say before I put to a motion Mr. Schwartz's challenge of the Chair's ruling? Mr. Yagoda's motion was not in order.

MR. SCHWARTZ: If it is appropriate, I would just as soon say it now, and that is perhaps a motion, Mr. Chairman, expressing the appreciation of this committee to the committee counsel and to the Regional Attorney for their efforts to give us all of the guidance legally that is possible for them in developing procedures.

CHAIRMAN HORLACHER: There can be no question that the committee counsel and the Regional Attorney have made every conceivable effort to provide this committee with every possible assistance and legal advice and guidance.

MR. SCHWARTZ: Can the record show that for all of us? I certainly would like to be recorded as one.

CHAIRMAN HORLACHER: I assume the Chair speaks for the entire committee in this respect. A nodding of heads would indicate he does.

I take it now that you are ready to vote?

MR. SCHWARTZ: Yes, sir.

MR. YAGODA: Yes.

CHAIRMAN HORLACHER: Will the members of the committee who are in favor of sustaining the ruling of the Chair please hold up your hands.

(No response)

[25] CHAIRMAN HORLACHER: Will the members of the committee who are opposed to sustaining the ruling of the Chair and would vote to set it aside please hold up your hands?

(Show of hands: Messrs. Alper, Yagoda, Schwartz, DeLeo and Sanchez.)

CHAIRMAN HORLACHER: I count five votes to overrule the Chair's ruling. It is overruled.

The effect of this action is to reverse the ruling and make the motion a proper one. I do not recall, but perhaps it was seconded -- Mr. Yagoda's motion to change the rate. Was it seconded? Mr. Sanchez, you did.

Since the action you have just taken makes a vote on the motion proper at this stage, I will call for a vote, unless there is a discussion any member of the committee wishes to make on the pending motion.

(No response)

CHAIRMAN HORLACHER: Inasmuch as no one has availed himself of the opportunity to make comment, a vote on the motion will be had.

All those in favor of the motion -- which, may I remind you, is to increase the recommended rate of the committee, or to change, I should say, the recommended rate of the committee from \$1.20 an hour to \$1.22 an hour -- those in favor of this motion hold up your hands.

(Show of hands: Messrs. Alper, Yagoda, Schwartz, DeLeo and Sanchez).

CHAIRMAN HORLACHER: The Chair counts five in favor of the motion.

[26] The Chair would like to be recorded as voting in opposition to the motion.

Are there any more requests beyond those already acted upon for changes in the report?

Obviously, the result of the last motion will require the report to be changed in one very vital particular.

Are there any requests for changes in any other particulars? Apparently there are none.

MISS BECK: I have two.

CHAIRMAN HORLACHER: The committee economist, Miss Helen Beck, has two suggestions.

MISS BECK: On page 3 in the paragraph that is under the dotted line the rate, of course, will be changed and the last sentence in the paragraph should read:

"A minimum wage of \$1.22 an hour for the Sweater and Knit Swimwear Industry in Puerto Rico would increase the wage bill 2.8 percent and would affect 75 percent of the covered workers . . ."

CHAIRMAN HORLACHER: This change, of course, is an inevitable one, in the light of the change in the rate. We had better do it legally. The last sentence will now read:

"A minimum wage of \$1.22 an hour for the Sweater and Knit Swimwear Industry in Puerto Rico would increase the wage bill 2.8 percent and would affect 71 percent of the covered workers if only those workers presently earning below the minimum were considered."

[27] MISS BECK: I inserted the words "no more than 2.8 percent," and "approximately 75 percent."

CHAIRMAN HORLACHER: Sorry; I missed that. In front of "2.8," "no more than," and before "75," "approximately."

I assume there is no objection to these changes, which become virtually mandatory in view of the other action.

MR. BLUM: I have one suggestion.

CHAIRMAN HORLACHER: Counsel has a suggestion.

MR. BLUM: On the last page, page 4 of the report, in the last sentence, the report reads:

"The minimum wage has not been recommended solely on the basis of age or sex."

I would recommend deletion of the word "solely."

CHAIRMAN HORLACHER: It is deleted on my copy.

MR. BLUM: I deleted it.

CHAIRMAN HORLACHER: I thought it was official. Does anybody have any objection to this suggestion?  
(No response)

CHAIRMAN HORLACHER: There being no objection, it should be noted that the last sentence will read:

"The minimum wage has not been recommended on the basis of age or sex."

Are there further changes?

(No response)

[28] CHAIRMAN HORLACHER: There being no further changes, this will constitute the committee's report and the members of the committee who are supporting its majority recommendation will now please sign the report.

MR. BLUM: Could we have a formal vote for the report?

CHAIRMAN HORLACHER: Do we need that? Off the record.

(Discussion off the record.)

CHAIRMAN HORLACHER: It is suggested that the committee ought to formally adopt the entire report as revised. Is there a motion to this effect?

MR. SCHWARTZ: I so move, Mr. Chairman.

CHAIRMAN HORLACHER: It is so moved by Mr. Schwartz.

Seconded?

MR. DE LEO: I second it.

CHAIRMAN HORLACHER: It is seconded by Mr. DeLeo.

All in favor of the motion please hold up your hands.

(Show of hands: Messrs. Alper, Yagoda, Schwartz, DeLeo and Sanchez.)

CHAIRMAN HORLACHER: Opposed?

(No response)

CHAIRMAN HORLACHER: The report is formally adopted as revised, and the Chair declares this session adjourned, with the understanding that the members will appropriately sign the report.

[29] MR. SCHWARTZ: I would like the record, Mr. Chairman, to show that as a member of this committee I deeply appreciate the services of our Chairman. I sympathize with the tensions under which he served, but I do hope that in the next year he will find many leisure moments to compensate him for the pressures of the events of today, as it were, for other days.

CHAIRMAN HORLACHER: The Chair thanks you.

MR. DE LEO: A job well done.

(Whereupon at 3:15 P.M. the executive session was concluded.)

**EXCERPTS FROM PUBLIC HEARING BEFORE  
SPECIAL INDUSTRY COMMITTEE NO. 75 IN  
PUERTO RICO, NOVEMBER 8 - 10, 1965**

[6] MR. TITELMAN: Counsellor, this is No. 13?  
(indicating)

MR. BLUM: Yes, that is Exhibit No. 13, offered for identification.

Mr. Chairman, at this time, before we accept these exhibits into the record, I would like to discuss which of the prehearing statements offered to qualify given companies or persons as parties at this hearing within the meaning of the regulations have been accepted as such and which parties have been so qualified.

The committee has accepted the statement submitted by Dr. Lazare Teper on behalf of the International Ladies' Garment Workers' Union as meeting the requirements of the regulations and has qualified the union and Dr. Teper as its representative as a party at these hearings.

With respect to the 18 companies listed in Exhibit No. 13, the committee has approved the qualification of certain of those companies as parties and has not approved the qualification of others as parties. The companies whose qualification was approved are: Puritana Manufacturing Company; Rosita Mills, Inc.; Northridge Knitting Mills, Inc.; Weststone Knitting Mills, Inc.; Midland Knitting Mills, Inc.; Glamourette Fashion Mills, Inc.; Wendy Textile Mills; and Messana Dyeing and Finishing, Inc.

Companies not admitted as parties to this hearing because of inadequacies in the financial statements submitted to us within the meaning of the regulations are: Sigo Corporation; Yauco Super Knits, Ltd.; Textile Dye Works, Inc.; Finetex, Inc., and Gurabo Knitting Mills, Inc.

Companies whose admission as parties will be subject to the presentation of additional data by the individuals presenting the case are: Bonita, Inc.; Gordonshire Knitting Mills; Finrico Company;

\* \* \*

HELEN MARIE BECK,

a witness appearing in behalf of the Government, after being first duly sworn, took the stand and testified as follows:

DIRECT EXAMINATION

\* \* \*

[14] THE WITNESS: In addition, there are data for July and August which [15] were submitted by the Customs Bureau. So that the information for shipments for 1965 is for the first eight months.

The bulk of the sweaters that have been shipped from Puerto Rico to the States consist of sweaters of man-made fibers except acetate and rayon, and women's and misses' and juniors' have accounted for the largest part of them, according to our survey, and also according to the information that was submitted by the Census.

In addition to sweaters, in Exhibit 15, you will find shipments of swimwear from Puerto Rico to other parts of the United States, and this has only been reported or this has only been shown as a separate item since the beginning of 1965, so that there isn't any comparable information to give before 1965.

MR. YAGODA: Can we go off the record for a moment?

CHAIRMAN HORLACHER: Yes.

(Discussion off the record.)

CHAIRMAN HORLACHER: We are back on the record.

THE WITNESS: If you will turn to Exhibit 15, page 8, Table 9, the second revision, gives the number of covered workers, including learners, for selected dates from 1959 to 1965. This information has been collected by the Wage and Hour Division in the surveys for the industry committee hearings.

On August 15, 1965, there were 2,344 covered employees. This compares with 2,171 in August of 1964, and 2,294 in August of 1963.

Table 10, on page 9 of Exhibit 15, shows the number

of covered workers by group and firm. The Gordonshire group, of the affiliated companies, by group -- we have listed the companies that are affiliated in [16] Puerto Rico, and the Gordonshire group accounts for the largest single group. In August of 1965 they employed 633 of 2,344 employees.

On page 14 of Exhibit 6, the economic report, there is given information from the Wage and Hour Division surveys on average hourly earnings in the industry. The most recent date that earnings information was collected was in February of this year, 1965. At that time the average straight-time hourly earnings were \$1.27. 58 percent of the covered workers at that time received the applicable minimum wage of \$1.17 an hour.

On Page D-16 of the economic report, Exhibit 6, is given the distribution of covered employees by average straight-time hourly earnings. It gives it for all of the industry and it also gives it by the groups of the industry, that is, the affiliated companies.

On page D-18 there is a table, Table 16, the purpose of which is to give an indication of the effect on the wage bill of increasing the hourly minimum to the selected higher minimum wage rates shown in the table. The hourly wage bill for the employees for which wage data was tabulated -- there were 2,152, and the hourly wage bill for these employees was \$2,733.04 for one hour. Now, if the minimum were increased from \$1.17 to \$1.175, this would increase the hourly wage bill for the whole industry by \$6.25. This is shown under "Increase in Hourly Wage Bill." The absolute amount is \$6.25, and it would increase the hourly wage bill 0.2 of a percent, and in cents, this is 0.3 of a cent.

This is only meant to show what the increase in the hourly wage bill would be if the minimum was increased only -- that is, if only those that were receiving the minimum were increased to \$1.175, although that [17] would be just the legal requirement. Any other increases that are given to keep the occupational wage scales the same, or any other reason for giving increases, are not shown here. There is no attempt to.

This applies to this one particular wage week that was selected for the survey, and it applies to one hour of that wage week.

MR. TITELMAN: Pardon me, Mr. Chairman, may I ask a question?

CHAIRMAN HORLACHER: Yes, if it is a clarifying question.

MR. TITELMAN: Yes.

When you refer to this differential of 0.2 of 1 percent or 0.3 of a penny, you are referring to that 58 percent that is covered by that, or 100 percent? If you refer back to the table --

THE WITNESS: Yes, there were 58 percent at the minimum.

MR. TITELMAN: Then you are talking only about the 58 percent?

THE WITNESS: Yes.

MR. TITELMAN: O.K. Thank you.

THE WITNESS: On page 8 of Exhibit 7 -- this is the supplement -- Table 11 gives employment and earnings for the knit outerwear industry on the mainland, and it is the production workers in the knit outerwear industry. This industry has been chosen since it most nearly would approximate the industry here in Puerto Rico. However, it is not confined to sweaters only, it is knit outerwear, and it covers a broader number of items and not just sweaters and swimwear and the other items that are made in Puerto Rico, but it probably is the nearest that we could get for comparisons. The wage in June of 1965 was \$1.84. And this is the gross average hourly earnings.

Since the supplement was prepared we have information from the [18] Bureau of Labor Statistics, and in July it was also \$1.84; in August it was \$1.85.

\* \* \*

[24] CHAIRMAN HORLACHER: Mr. Cooper?

MR. COOPER: I have a few questions, Mr. Chairman.

#### EXAMINATION BY MR. COOPER

Q. Miss Beck, on page 4 of Exhibit 6, do you have any indication of the number of affiliated mainland com-

panies that there are in this industry in Puerto Rico in 1965? A. I have that information. I don't have it right here, but I do have that information. I thought I had it here, but I realize I forgot to bring it here.

Q. And do you have that information for 1959? A. Yes, I do.

Q. And you indicate the period since when there have been certain changes in ownership? A. Yes, I have that information, but not right here. I can get it in a few minutes.

Q. When it is convenient, will you let us know the comparison between the number of mainland companies with plants in Puerto Rico as of 1959 and as of 1965?

A. Yes, I will give you that information.

Q. And can you also tell us what was the last year that a new mainland company came to Puerto Rico, that is, a company which had not previously been here, to establish a new facility in Puerto Rico? A. I believe that was Northridge Knitting Mills, Inc., in 1957.

Q. You are saying that since 1957 there has been no additional company which has come to Puerto Rico in this industry, not to purchase an existing plant, but to start a new one, is that correct? [25] A. I think that is right.

Q. Would you turn to page 9, please?

CHAIRMAN HORLACHER: Which exhibit?

MR. COOPER: Exhibit 6. I am talking about Exhibit 6, unless I make reference to another exhibit.

BY MR. COOPER:

Q. I may be wrong, Miss Beck, but I think you did not mention this page in the course of your discussion. Is the data beginning in the second paragraph and the table which follows the second paragraph on this page still accurate? A. There has been a revision in the 1965 figure. It is 162, that is, 162,000 dozens.

MR. TEPPER: Which figure is that?

CHAIRMAN HORLACHER: Instead of 260?

THE WITNESS: Instead of 260, it is 162 for quantity. For value, instead of the figure there, 11,177, it is 11,216.

BY MR. COOPER:

Q. Now, in the text on that page, Miss Beck, you say -- and I am reading in the middle of the second paragraph on page 9:

"The total for this six-month period in 1965 represented a 60 percent increase in quantity and an 80 percent increase in value over shipments in the similar period in 1964."

With respect to the quantity figure, it is true, is it not, that instead of a 60 percent increase there was in fact a decrease? A. Yes. That should read -- and this is paragraph 2 on page 9:

"The total for this six-month period in 1965 represented a [26] decrease of 1 percent in quantity and a 44 percent increase in value over shipments in the similar period in 1964."

MR. VILLARONGA: An increase in value?

THE WITNESS: In value it was a 44 percent increase. This is for the six-month period, and it is given in the text table below, the absolute figures.

BY MR. COOPER:

Q. On page 11, where you are discussing the 50 States at the bottom of the page, the economic report says -- and I am quoting:

"The product grouping includes items other than those within the definition of the Sweater and Knit Swimwear Industry in Puerto Rico."

It goes on to point out that employment of production workers within this category has shown a steady upward trend during 1961 to 1964.

Is it not true, Miss Beck, that although this product grouping includes some items other than those within the definition of the Sweater and Knit Swimwear Industry, it does not include items which are within the definition of the Puerto Rican Sweater and Knit Swimwear Industry? For example, knitted shirts, swimwear, sweaters, the cloth of which is bought elsewhere?

MR. TEPER: What is the question?

Mr. Chairman, may I ask the reporter to read the question?

CHAIRMAN HORLACHER: Please read the question.  
(Whereupon the reporter read the last question of  
Mr. Cooper)

MR. TEPPER: Mr. Cooper, do you want to correct  
your question?

CHAIRMAN HORLACHER: Please, let's not have  
this kind of thing.

\* \* \*

[28] BY MR. COOPER:

A. That is true.

Q. Page 14. In terms of your discussion of the effect of any increase in the minimum on the wage bill of the companies in the industry, is it not correct that your table there shows that from the survey period of September-November 1959 through the survey period of February 1965 the average straight-time hourly earnings, according to your figures, went up 21 cents, or an identical amount to the amount by which the minimum wage went up? A. Yes, both shown here went up 21 cents, the applicable minimum wage and the straight-time hourly earnings.

Q. On page 16, where you discuss the contracts that the ILG has with plants in Philadelphia and New York, is it not true that identical data were made known to the committee which met last November and that the contracts to which you are here referring are three-year contracts which were in effect at that time? A. I can answer this one part. This is a three-year agreement and it went into effect before the committee met, before the industry committee on sweaters met in 1964. I am looking at the economic report for 1964. I am not sure that information was given, but at least the answer

--

MR. COOPER: I will accept that.

THE WITNESS: I will see if --

CHAIRMAN HORLACHER: Mr. Cooper is satisfied with that answer.

MR. YAGODA: Mr. Chairman, I wonder if you would permit me to get a little more clarification on the ques-

tion which was just directed to the witness. Do you want me to make my notes and wait?

\* \* \*

[34] THE WITNESS: Shipments as a percent of production -- and this is the same, this compares with Table 5-A in Exhibit 7 -- in 1960, 4.6 percent, shipments in Puerto Rico as a percent of production in the 50 States; 1961, 4.2 percent; 1962, 5.1 percent; 1963, 4.3 percent; 1964, 3.8 percent.

BY MR. COOPER:

Q. So that of the years which this table shows, do I have your figures correct when I say that the lowest percentage shown of Puerto Rico as against the mainland was in 1964? A. Yes.

Q. And that the first eight months of 1965 are running practically half a percentage point behind the first eight months of 1964? A. Yes.

Q. And is it also correct, Miss Beck, from this table, to conclude that on the mainland, at least for the kinds of sweaters shown in Table 5-A, in terms of production, 1964 was the best year on the mainland from 1960 through 1964? A. The production was the largest in 1964. Between 1960 and 1964, production was higher in 1964 than in any other of the years.

Q. And if you turn back to page D-2, where you have the Puerto Rican shipments, is it correct to conclude that in Puerto Rico the shipments from Puerto Rico were lower than for any other year shown in that table, from 1960 through 1964, other than the year 1961, when 2,000 less were shipped than in 1964? A. That is correct, yes.

Q. Have you had an opportunity to compute the percentage by which the first eight months of 1965 on the mainland, as shown in Table 5-A, [35] were better than the first eight months of 1964 in terms of volume?

\* \* \*

[37] A. Yes.

Q. And do you know whether it is not a fact that Malcolm did show a loss for that year?

Well, I will withdraw the question. This is not an important line of questioning.

Now, turning, however, to page 12 of Exhibit 7, Table 19-a Revised -- A. I can answer that question. Malcolm had a loss for the year ending June 30, 1965.

Q. All right. Now, turning, if you will, to Table 19-A in Exhibit 7, I want to make certain --

CHAIRMAN HORLACHER: Page?

BY MR. COOPER:

Q. Page 12, Exhibit 7, the first supplement to the economic report, Table 19-A, where you show combined operating profit as a percent of net sales. Do I understand correctly that in compiling this table you have taken the Gordonshire figures as of the end of their fiscal year which coincided with the year shown on the left-hand side of this page? A. Yes.

Q. And it is true, is it not, that unlike the other companies in this industry the five Gordonshire companies have a fiscal year which ends on June 30? A. Yes, their fiscal period ends June 30. There may be one other firm that has a fiscal year ending in the middle of the year, in the middle of the calendar year. I am not positive. I can look that up.

Q. If this is so, would you at some subsequent time let us know? [38] I think this is not so. A. I will check on that. Most of the companies, except the Gordonshire group, their fiscal period ends December 31, nearly all of them.

Q. With respect to the Gordonshire group, which you have testified consists of the single largest group within this industry, is it not correct that the most recent audited financial statements for full years for the five Gordonshire companies are for the year ending June 30, 1965, a year which includes part of 1964 and the first six months of 1965? A. Yes.

Q. Have you made computations using the most recent full year audited statements of all companies which are part of the data supplied in Exhibit 13, this industry's prehearing statement? A. Yes, I have.

Q. Would you mind giving the percentage of net sales for the years 1962, 1963, and 1964, using the most recent Gordonshire figures in each instance in the preceding year? Do I make myself clear? The Gordonshire statement which ends as of June 30, 1965, includes six months of 1964 and six months of 1965. They are the most recent statements. Will you take those most recent statements and let us know what the combined operating profit as a percent of net sales in this industry would show for the years 1962, 1963 and 1964? A. Well, Gordonshire combined with the other companies in the industry for which we have data, in 1962, 16 firms had a net operating profit of 4.0 percent; in 1963, 18 firms had a net operating profit of 2.6 percent; in 1964, 18 firms had an operating profit of 1.6 percent [39] of net sales.

MR. TEPPER: Will you read them slower, please?

THE WITNESS: In 1962 -- and this is operating profit as a percent of net sales. In 1962 the percentage is 4.0; in 1963 it is 2.6; and in 1964 it is 1.6.

CHAIRMAN HORLACHER: I would like to be clear on how this differs from the table. In the table this group of companies --

THE WITNESS: Yes, as shown on page 12.

CHAIRMAN HORLACHER: -- for 1964, was included for one-half of 1963 and one-half of 1964, and the figure you just gave us for 1964, this group of companies was included for one-half of 1964 and one-half of 1965; is that the difference? You have put them in a different year now, is that correct?

THE WITNESS: Yes. Since Gordonshire's fiscal year ends on June 30 --

CHAIRMAN HORLACHER: Yes, I understand.

THE WITNESS: -- we moved it to a different year.

CHAIRMAN HORLACHER: The new computation moves them back a year?

THE WITNESS: Well, I am not sure about moving them back. For June 30, 1965, it is included in the 1964 data.

CHAIRMAN HORLACHER: And it is not included in the table 1964 data?

THE WITNESS: Table 19-A of the Supplement?

CHAIRMAN HORLACHER: Yes.

THE WITNESS: For 1964 -- Gordonshire's fiscal year ends June 30, 1964, and it is included in 1964, while with the figures that I read that aren't in the table, Gordonshire's period was June 30, 1965, included in 1964.

\* \* \*

[40] MR. TEPPER: He properly pointed out that when Gordonshire data ending on June 30, 1964 was included in with other data on a combined basis for 1964, that six months are included which are six months in 1963. By the same token, it is an inexactitude when six months of [41] operations are included for 1965 and combined with 1964. But either way, the figure doesn't represent the calendar year.

CHAIRMAN HORLACHER: I thought that was what I had just said.

MR. TEPPER: Yes.

MR. COOPER: I have no further questions.

CHAIRMAN HORLACHER: Before you proceed, Mr. Teper, on one small point, one of the questions asked by Mr. Cooper elicited a correction; the correction stimulated my curiosity. On page 9 of the economic report the corrected figures indicate a decrease in the quantity of shipments over the preceding year and a very substantial increase in value of shipments. Can you shed any light on that?

THE WITNESS: No, I have no information on that, Mr. Chairman.

CHAIRMAN HORLACHER: Thank you.

Go ahead, Mr. Teper.

#### EXAMINATION BY MR. TEPPER

Q. Mr. Cooper, in his last question, asked you to combine data for the operating profit of the Gordonshire group for a specific year with other data on the

operating profit. Am I correct in interpreting his question? A. Yes.

Q. Isn't it a fact that the data contained in Exhibit 13, where these figures are available, does not contain any such figure as operating profit for the Gordonshire group for any one of their companies, and, in fact, you have been using figures for net profit or loss in lieu of figures for operating profit or loss? A. I will have to check on that.

\* \* \*

[43] MR. COOPER: Yes, in so many words, so far as I can recall.

MR. TEPER: Fine. Mr. Cooper stipulates that there is no such entry as operating profit on these statements.

BY MR. TEPER:

Q. Now, reference was made to a number of tables which purport to give statistics of production which you have described or which are described as production on the mainland of the United States. Isn't it a fact that the data shown in these tables also comprise the goods that are shipped from Puerto Rico to their affiliated companies in the States? A. In some cases there would be goods that were produced by an affiliate in Puerto Rico and shipped to the mainland. That would include --

Q. To the mainland affiliate? A. Yes, to the mainland affiliate. That would include production in Puerto Rico.

Q. In other words, the figures then reported by that affiliate as his production will include his production both in Puerto Rico as well as in the States? A. Yes. The Census Bureau has not as yet shown that information separately. They have not been able to show it.

Q. Now, could you tell us, if you will, what was the percentage increase in the dollar volume of shipments of sweaters from Puerto Rico to the United States in the first eight months of 1964 and the first eight months of 1965? I am referring to the dollar amounts. A. I haven't figured that percentage yet.

Q. Could you give us the actual dollar figures? What were they [44] January to August 1964 and January to August 1965?

\* \* \*

[51]

MITCHELL J. COOPER

\* \* \*

DIRECT EXAMINATION

\* \* \*

[52] THE WITNESS: Thank you, Mr. Chairman. I regret to say that in no way alters the remarks which it becomes necessary for me to make with respect to this committee's decision; and in making these remarks I want [53] to make it clear, Mr. Chairman, that I am not at this point seeking a reconsideration of that decision, unless the committee on its own motion sees fit to do so. It is, however, incumbent upon me as the attorney for these eighteen companies to see to it that all of their rights are protected, and lest any of those rights be waived with respect to this or any future proceeding, I do want to make a few comments with respect to the committee's action.

At the outset, in this regard, I want to remind the committee, and more particularly its counsel, of a very famous dictum of Justice Jackson some years ago, when he said that a judicial decision is not like a railroad ticket, good for this day and this day only, it is expected to stand, and the courts will adhere to this doctrine. This is not a court. It is, however, a quasi-judicial proceeding, governed by the Administrative Procedures Act, and the rights of the parties are carefully protected by the law.

The statements which you have seen fit to reject for purposes of inclusion of some of these companies as parties are identical in form and in type of content to financial statements which have been submitted to previous committees for at least four successive years immediately preceding this one. I say for at least four successive years, because this is the only period of time when Mr. Kelberg and I have been associated with

this industry in this capacity. More than that, such statements were submitted to the Secretary of Labor under identical rules with respect to the submission of unabridged financial data in connection with two appeal procedures under the amended Fair Labor Standards Act. In each instance, with the exception of last year -- an exception which I [54] shall spell out in a moment -- in each instance the financial statements were accepted by either the committee or the Secretary of Labor without qualification.

There is one other exception. I should note that several years ago one set of statements was rejected because the company had neglected to have notarized a certification that the statements complied with income tax returns.

Now then, not only have we a precedent going back four years and going to both the committees appointed by the Secretary of Labor and to the Secretary himself, or those acting for him in appeal proceedings, but, interestingly enough, you also had objections identical to the objections presented here to the admissibility of these statements presented in the past. This was not simply a question of accepting the financial statements of these parties, it was a question of accepting them over the express objections made by the ILGWU, objections which were considered by the committee and rejected by the committee, which then informed us that we could participate as parties.

Now, I submit that this is precedent sufficient for these parties or for these companies to insist upon their right to appear once again as parties. Moreover, you should know that the first notice that this industry had that the Department of Labor had any question whatsoever with respect to the contents of this prehearing statement was on November 4, 1965, when Mr. Kelberg received from Mr. Blum, the committee counsel, a special delivery registered letter requesting certain data identical to data which the ILGWU had requested

in the past, for the most part, and which the committee had said we need not supply.

[55] So that you have a situation where a precedent of four years is upset on two days' notice.

Let me go further.

I am advised that Yauco is one of the companies which you have seen fit not to admit as a party. I would remind you that Yauco is not one of the companies to which reference was made in the letter of November 4th from the Department of Labor to Mr. Kelberg. So that with respect to Yauco, the first notice we had that the Department of Labor felt there was an inadequacy with respect to the financial statements -- statements identical to those accepted in the past -- was this very day.

And I must go further, Mr. Chairman.

I was advised this morning by Mr. Blum that the committee, in effect, had no choice other than to reject certain of these financial statements, and that the committee's activity would have to be guided in this respect by a letter from Clarence Lundquist, the Administrator of the Wage and Hour Division -- Excuse me. Mr. Blum?

MR. BLUM: Excuse me. I just wanted to say that I did not say the committee had no choice but that I had no choice in my recommendation.

THE WITNESS: I beg your pardon. -- that Mr. Blum had no choice in his recommendation other than to follow the guidance set forth in a letter dated August 24th from Mr. Clarence Lundquist spelling out what, in his judgment, an unabridged financial statement should contain. Interestingly enough, this was a letter addressed not to this industry or made available by Mr. Lundquist to this industry, but a letter addressed in response to an inquiry, which I haven't seen and don't care to see, addressed to Mr. Lundquist by Mr. Teper in behalf of the ILGWU.

[56] The first that this industry became aware of any alteration in the Department of Labor's judgment

as to what would be an appropriate financial statement was at approximately five minutes of 10 this morning, whereas the ILGWU had been informed on August 24th that this was Mr. Lundquist's then interpretation.

MR. TEPER: 1964.

THE WITNESS: 1964? I didn't catch this.

MR. TEPER: And that was cited at the last hearing last year, sir.

THE WITNESS: I can only tell you, Mr. Chairman, that if this was cited at the hearing last year you should be aware of this, that your predecessor committee apparently had the same letter available to it and did not feel bound by it. I have yet to hear from Mr. Lundquist, and I might say that I am all the more shocked that, given this passage of time, these regulations have not been amended by the Wage-Hour Administrator to reflect the fact that by "unabridged" he does not mean unabridged for purposes necessarily relevant to Wage and Hour proceedings, but unabridged in terms of every item to which an accountant may have made reference, relevant or not.

One or two other points I am sorry to have to bring up.

With respect to the specific companies mentioned, we were asked for the following -- and it becomes necessary to refer to Mr. Blum's letter to Mr. Kelberg dated November 2nd, with which you are all familiar, and I shall only now make reference --

MR. BLUM: Excuse me. I don't know if the committee does have a copy of the letter. I would be happy to provide them with one.

CHAIRMAN HORLACHER: Should we have a copy?

[57] THE WITNESS: I think for accuracy and an accurate record we should have copies available.

CHAIRMAN HORLACHER: Do you wish it now?

THE WITNESS: It is not necessary. I can tell you very briefly the items that Mr. Blum asked us to provide.

1. Tinto. But you have not rejected Tinto for the reason set forth in the letter. He points out that a note

referred to in the 1965 income statement is not included, and this was an error, that is, from the Department's point of view. It was included, so that was not a problem.

With respect to Finetex and Gurabo, for which additional data was requested, I want to point out to the committee that the data requested is absolutely identical to data requested in the past by the ILGWU and rejected by the committee as unessential.

For Glamourette, Messana and Wendy he requested certain information. There is no problem there, because they have been admitted.

With respect to Sigo, the comments I made with respect to Finetex and Gurabo apply.

For Textile Dye Works, we are advised that no cost of goods sold schedule is provided with the 1962 statement. If that is the reason for your rejection of Textile Dye, Mr. Chairman, I must submit that is in error because the income statement does show a cost of goods sold for 1962. This appears on the page at the very end of the book.

MR. BLUM: That was not the reason for rejection, Mr. Cooper.

THE WITNESS: I beg your pardon.

MR. BLUM: It was pointed out that additional schedules were not [58] present in the Textile statement.

THE WITNESS: I am happy to have this enlightenment, because what you are telling me is that it was rejected for reasons that we were not given. These are identical with statements that were submitted and not rejected in the past.

MR. BLUM: You were advised at least this morning, Mr. Cooper.

THE WITNESS: I don't deny that.

MR. SCHWARTZ: Mr. Chairman, I wonder if I could ask one question of Mr. Cooper in relation to a statement that he makes. I don't know that he knows what may have happened in the executive session of the com-

mittee. I don't know, at this moment, whether the record would indicate whether the Chairman of the committee made a statement on the position of the committee in accepting or rejecting financial statements.

CHAIRMAN HORLACHER: The Chair plans to make a statement giving his interpretation of the committee's action when the witness has finished with his comments about this whole area.

THE WITNESS: As I understand it, Mr. Chairman, there is a sort of grey area between the companies admitted and those rejected as parties, and that grey area consists of the Gordonshire companies, the five companies for which additional data has been requested.

CHAIRMAN HORLACHER: By "grey area" you mean that the admission as party in these instances was made conditional?

THE WITNESS: Yes.

CHAIRMAN HORLACHER: All right.

THE WITNESS: My understanding is that the kinds of data which [59] the committee feels, under the guidelines set down by Mr. Lundquist's letter, ought to be submitted are as follows: An allocation between the Sweater and Hosiery Divisions of the Gordonshire Company.

\* \* \*

[64] MR. BLUM: Do you know if it would be possible to obtain the [65] schedules if Arthur Andersen were asked to supply them?

THE WITNESS: I don't know, but I would think it would be impossible to obtain them during the pendency of this hearing. However, I have no way of knowing. I do not know.

MR. BLUM: With respect to Bonita, do you have any knowledge, from your knowledge of the company's operations, whether they still operate what might be described as a separate swimwear and skirt division?

THE WITNESS: I know part of the year they make skirts and part of the year they make swimwear. I have the impression, from the Wage and Hour survey, that

they pay the swimwear minimum all year, although they are entitled to pay a much lower minimum for skirts, which does call for a lower minimum than the sweater minimum.

MR. BLUM: Would it be possible to learn from the company officials located in Puerto Rico whether accounting is kept on a separate basis?

THE WITNESS: To the best of my knowledge there is no one in Puerto Rico who would be sufficiently familiar with the procedure adopted by Arthur Andersen. If that knowledge is incorrect, I will amend it the next day.

MR. BLUM: I have one more question, and that relates to all five companies taken as a group. In each of the accounting statements the certification noted the fact that there were certain receivables that had not been completely analyzed by the accountants, receivables relating to inter-company transactions, and since this took place with respect to each of the companies for each of the years in question, this inability of the accountants to analyze these receivables, there is nowhere an analysis of those receivables and a picture of each [66] company with respect to those receivables.

\* \* \*

[70] MR. BLUM: Mr. Chairman, if I may, just one brief comment.

With respect to that letter, Mr. Kelberg mentioned that there was certain information requested there with respect to Tinto and Textile Dye, and it is true that he did provide me with clarification this [71] morning as to whether that information was actually in the statements already provided. It did not appear initially on its face that such information was in the statement.

MR. KELBERG: What is Exhibit 17?

MR. COOPER: May we go off the record?

CHAIRMAN HORLACHER: Yes.

(Discussion off the record.)

CHAIRMAN HORLACHER: On the record.

As far as the Gordonshire group, the committee's action was a qualified one and calls for further action

to determine, in the light of your testimony this afternoon, Mr. Cooper, what should be done regarding this group of five companies. I think it is appropriate for this action to be taken in executive session, and therefore the committee will go into a very brief executive session the first thing tomorrow and clear out this remaining item.

Now, the rest of my statement for the record concerns the Chair's interpretation of what was done in the situations where certain of these statements were not accepted -- I think perhaps there are about five of them -- and the companies were not qualified as parties, but the committee did agree that they should be permitted, through your representation, to participate as witnesses.

It is the Chair's interpretation that the effect of this is to make available to the committee for its use the information contained in the statements. It is the further interpretation of the Chair that the action of the committee in not accepting the statements for purposes of qualifying these companies as parties did not carry a necessary [72] connotation about the validity or reliability of the contents of the statements. Counsel was present and advised the committee, mainly on grounds of lack of schedules, that had been referred to but which had not been produced, that therefore these were, from the point of view of the regulations as authoritatively interpreted, not unabridged statements. The committee accepted the advice of counsel to this effect. The committee did not, in each and every one of these instances, examine in detail the implications or inferences growing out of the absence of the schedules and what the appropriate implication or inference might be in each and every case and make its judgment on the basis of whether or not, in view of such implication or inference, we ought or ought not to accept the statement. We accepted the advice of counsel that they technically did not meet the requirements of the regulations as presently interpreted, and for that reason we did not accept them as parties.

Now, Dr. Teper, would you like to make your statement?

MR. TEPER: I will be very, very brief.

CHAIRMAN HORLACHER: And then, Mr. Cooper, an additional two or three minutes, perhaps, could clear everything out, so that tomorrow we can start with the substance of your testimony.

MR. TEPER: If the committee would turn to Exhibit 13, page X350, and follow the pagination of the original documents, they will discover that the first page, X350, is marked 1 stroke 9, the next page is marked 2 stroke 9, meaning second out of nine pages. The following page, X352, is labeled page 6 stroke 9, suggesting that pages 3/9, 4/9, and 5/9 were left out. They are not here. This is an abridgement. It [73] doesn't make any difference what that abridgement consists of.

MR. BLUM: Excuse me. What company is this?

MR. TEPER: This is Textile Dye Works, statement for the year ended December 31, 1963.

MR. BLUM: And that is a company that was not admitted as a party.

MR. TEPER: That is correct, and I am using this purely as an example of abridgement. Once this abridgement takes place, the document loses its objective character. The essence of an accountant's report, his certification and all of his notes and schedules, is based on the principle of the needed disclosure to all the parties at interest so that they could judge the particular document in its full validity. As soon as the party that has an interest in this proceeding, from the point of view of the company itself, decides by itself what schedules will be presented and what schedules will be left out, the document ceases to be an objective document and it ceases to be an unabridged document.

The regulation to which Mr. Cooper refers, Section 511.13, is quite old. And no question about it, a number of committees treated offenders under Section 511.13 kindly, the same way as criminal courts at times treat first offenders in a more kindly fashion than habitual

criminals. I am not suggesting any criminality involved here. But I pray, as a party to this proceeding, that I am deprived, just as the committee is deprived, of information which the regulations entitle me to have several days before this hearing begins.

I came and started analyzing this report here in Puerto Rico on Friday. I found that I could not find, for example, rent information [74] for the company known as Gurabo Knitting Mills, another company known as Finetex, Inc. This information was supplied to me here in the course of this hearing. I have spent the weekend analyzing these data, just as the Government economists analyzed this data beforehand. Neither they nor I had the information to which we were entitled under the regulations. This is an abridgement. This is a conversion of an objective document into a subjective document. It means that Mr. Cooper and his clients can decide what they will let a committee see or what they will not let it see.

The letter of Mr. Lundquist does no more than explain what is very clear, unmistakably clear, in Section 511.13. And I pray that even though some committees might have been indulgent with Mr. Cooper and so here he is in the same position that he has been in, this is no precedent. At some point charity ceases and the letter of the law must be applied. The regulation and Mr. Lundquist's letter each speaks for itself.

I thank you.

CHAIRMAN HORLACHER: Go ahead, Mr. Cooper.

THE WITNESS: Mr. Chairman, I regret the necessity for the remarks I am about to make. They will be very brief and I make them, again, only to preserve our position on the record lest it subsequently be stated that we waived this right.

I would like to point out to this committee that Section 205(b) 29 United States Code annotated provides that an industry committee -- quote:

"shall include a number of disinterested persons representing the public, one of whom the Administrator

shall designate as chairman, [75] a like number of persons representing employees in the industry, and a like number representing employers in the industry."

It is our position, Mr. Chairman, that what this statute clearly contemplates is what is commonly known as a tripartite committee, three members predisposed to the labor point of view, three members predisposed to the industry point of view, and three objective people sitting in the middle. I find it necessary to protest the constitution of this committee as not being legal within the clear purport of the statutory language, and I do so on two grounds.

Less than 10 percent of the employees in this industry have been chosen to be represented by or are represented, I should say, are represented by the International Ladies' Garment Workers' Union. Coamo is the sole organized plant in the industry. Nonetheless, this year, unlike all other years with which I am familiar with respect to proceedings before this and similar committees, all three labor members of the committee are in fact representatives of the International Ladies' Garment Workers' Union. This becomes significant, really, only in light of the fact that one of the industry members on this committee is already on record as being in favor of a minimum rate of \$1.25 for this industry and, to the best of my knowledge, bargains with one of the labor members of this committee for the wages and working conditions for his own company.

I want to call your attention to the fact that Exhibit No. 8 -- excuse me. I retract that. Exhibit No. 11, submitted to this committee from the United Knitwear Manufacturers League, signed by Abraham Kreiner, Secretary, bears on its letterhead "Herbert Alper, President," [76] and calls for a minimum rate of \$1.25 in this industry.

I further want to call the attention of the committee to the fact that Mr. Alper himself signed the prehearing statement for this organization, the same organization, at last year's hearing and called for a \$1.25 rate at that time.

In short, Mr. Chairman, it is the position of the industry that this committee, instead of having a three-three-three representation, clearly contemplated by the statute, in fact has three members representing the public, four members predisposed to the labor point of view, and two disposed to the industry point of view.

CHAIRMAN HORLACHER: Inasmuch as the statement was made for the purpose of making sure of the legal rights of the clients that you represent here, which could be construed as having been waived if you had not made such a statement, and inasmuch as there is no determination which this committee can make apropos of what you have just commented on, it seems that we ought to close the record at this point for today and agree to resume at 9 o'clock in the morning as per schedule.

The hearing is adjourned.

(Whereupon at 5:00 P.M. an adjournment was taken until 9:00 A.M., Tuesday, November 9, 1965.)

\* \* \*

[78] THE WITNESS: \*\*\* [79] Now, the period of the proceedings under the Act as amended to provide for \$1.25 on the mainland is, of course, over, and we are back on the normal biennial schedule. It is however, true, that the statute grants the Secretary of Labor discretion to order an additional review during a biennial period for any industry, where in his judgment such review is warranted.

It is also a fact that this is the only industry on the island for which an interim review has been ordered. So that the Sweater and Knit Swimwear Industry is here once again for the fifth year in a row and is the only industry which is being reviewed during this fiscal year.

Now, why is this the case? The order setting up this hearing, as all of you know, states that the hearing has been convened, and I am quoting, "in consideration of changes in the economic conditions in the Sweater and Knit Swimwear Industry in Puerto Rico."

This morning we are going to be exploring some of the alleged changes in the economic conditions. But be-

fore we do so, I do think it relevant to examine only briefly how it was that the Secretary of Labor deemed to exercise his discretion in this instance.

On July 14th of this year, 1965, Mr. Dubinsky, the distinguished President of the International Ladies' Garment Workers' Union, was testifying before the United States Senate Labor Committee in connection with proposed amendments to the Fair Labor Standards Act. In discussing the operation of the Puerto Rican program, Mr. Dubinsky said and I am quoting, "Let me tell you a secret now. There was one case particularly, a very important case, where they had decided on [80] no increase whatsoever. The union made a complaint. I understand another hearing is going to be arranged; although hearings usually take place every two years, another hearing is going to take place." Now, when Mr. Dubinsky told the senators that he was going to tell them a secret, he was not overstating the case. The fact of the matter is, that this was indeed a secret, for although the ILGWU had been advised of this privileged bit of information, namely, that another hearing would be convened, the affected industry had not been so advised and had no indication until sometime subsequent to July 14th, that in fact another hearing was going to be scheduled. Now, in fairness I ought to add that one really could not adduce from Mr. Dubinsky's testimony before the Senate Labor Committee that his reference to an industry where there had been no increase was necessarily to sweaters and knit swimwear. You should know that in the course of the past fiscal year there were at least six classifications in various industries on this island for which there are distinct rates, at least six classifications during the past fiscal year which were reviewed by committees similar to yours, and for which no increase was recommended. This includes, gentlemen, a 30-cent minimum rate for hand-sewing on fabric gloves for which, I am advised by the United States Department of Labor, there are 619 employees at a rate of 30 cents, which the committee felt ought to remain as it

was. We now know, however, that this, the Sweater and Knit Swimwear Industry, is the only one for which a review has been ordered and we also know that it is the only industry for which there has been a survey to determine whether any review would be [81] appropriate.

MR. SANCHEZ: Is that hand-sewing in the factory or homeworkers?

THE WITNESS: I'm sorry, Mr. Sanchez, I don't know. You are talking about the fabric rate?

MR. SANCHEZ: The Glove Industry.

THE WITNESS: Yes. I think it's the home rate, but I'm not sure. I find it hard to believe that a 30-cent rate would be a factory rate. I know for the 619 employees, the rate was reviewed. I know it was not increased.

I was saying that we know, as well, that this is the only industry for which a minimum wage survey had been ordered. We also know that this survey came about as the result of a very vigorous complaint by the International Ladies' Garment Workers' Union.

Now, the survey on the basis of which this hearing was ordered contained data for the first five months of this year and that's all. It was at the end of the accumulation of data for the first five months of this year that the Department of Labor concluded that a hearing was warranted. Most significantly, that data showed that for April of this year, the fourth month, shipments of sweaters from Puerto Rico to the mainland of the United States totaled 46,000 dozens, a figure to be contrasted with the figure for April, 1964, a year previous, of 16,000 dozens, and for May of this year, the latest month in the survey available to the Labor Department, the figure for shipments of sweaters from Puerto Rico to the mainland was shown as 113,000 dozens. This is to be contrasted to a figure of 50,000 dozens for May a year ago. This 113,000 dozen incidentally, was [82] by all odds the largest volume of shipments from Puerto Rico to the mainland of the United States for any month in the entire history of this industry. These were the figures on which the Department of Labor, in addition to

other data for five months, no question about that; but these were the shipment figures which were available to the Department of Labor at that time.

Well, it now develops, gentlemen, that these figures on which the Department presumably relied, were incorrect, if I may understate the situation. The April volume we now know, as a result of a correction by the Bureau of Census, the April volume, April, 1965, was actually 26,000 approximately, instead of 46,000 and the May volume, interestingly enough, we now know is approximately 36,000, in contrast to 50,000 for May of a year ago, instead of 113,000.

I respectfully suggest that while the Secretary of Labor may have the right under the statute to order a hearing on the basis of an ex parte complaint, on the basis of fragmentary data, and indeed, unwittingly, on the basis of data now proven to be grossly inaccurate, the sole responsibility for determining what the appropriate minimum wage for this industry should be, is of course, yours. I am satisfied, gentlemen, that as we proceed, that it will become abundantly clear to you that the last committee which sat in this room a bit less than a year ago, acted with great wisdom, and that its decision ought to be permitted to remain in effect throughout the biennium as is the case in every other industry under this program on the Island of Puerto Rico.

[83] In order to understand some of the figures which you have before you in great detail from the Government, from Dr. Teper and from the industry, I think perhaps it would be worthwhile to devote some time to some consideration of the history of this industry on the island. I would like to turn to a discussion of that history and of the state into which the industry had fallen by the time of the last hearing, before proceeding to a consideration of the degree and the nature of any changes in the economic condition of the industry which have occurred since the last hearing, being fully aware that your primary concern obviously, is what happened to the in-

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dustry since the committee met a year ago and determined that there should be no increase.

Now, in making this review and subsequently in going through the material which will demonstrate the state of the industry today, I would hope to try to place this industry in the perspective of the progress in the minimum rates of other industries on this island, industries which are not being reviewed, and particularly, if I may do so, other garment industries on this island.

The economic report, Exhibit 6, and Exhibit 7 and Miss Beck's testimony, give a rather full picture of the constituency of this industry. It has 19 plants. They vary widely in size, profitability and product. Some of them make men's and women's full-fashioned sweaters. Some make cut-and-sewn sweaters and some make dress shirts. One tried to make swim wear and four plants do finishing and dyeing. This is an industry which in its early days showed great promise and great potential, and which then went downhill, a trend which it has yet to reverse. It is, in fact, now engaged in a rather desperate effort [84] to reverse. It is, in fact, now engaged in a rather desperate effort to recover its economic and employment situation of several years ago. I regret to say that thus far it has been unsuccessful in that effort.

The industry came to Puerto Rico in 1952. It came here with the establishment of a plant known as, Sometex. From 1952 through 1957 its progress was steady. There were neither any plants closed nor sold. At end of the year 1957 there were 20 plants in this industry, one more than we now have, eight years later. Since the year 1957, as I believe Miss Beck has already informed you, not a single new mainland firm has begun a new operation in this industry in Puerto Rico. Let me emphasize that. The last year that a mainland company came to Puerto Rico in this industry, not to purchase an existing enterprise, but to start a new facility, was the year 1957. I would venture to guess that this is the only industry in Puerto Rico under this program whose growth stopped eight years ago. Since 1957 several

companies have changed hands and eight companies had to shut down.

Let me pause at this point before I discuss some of those plants with you, to point out to you that not only did the economic situation of this industry change, in the late 1950's era the industry continued to enjoy some degree of prosperity for the years immediately following 1957, I might say, but there was a change in the nature of the industry itself, a change which was not peculiar to Puerto Rico, but peculiar, rather, to the fickle demands of our female friends. When the sweater industry came to Puerto Rico, and we are talking about full-fashioned sweaters of one simple design, style was not a factor; beginning in the late '50's the industry changed its nature from one of basic, [85] relatively simple manufacture of sweaters, to one of having to meet fickle demands of a constantly changing style market. I am not so presumptuous as to say that there is a direct and sole cause and effect relationship between the change in the nature of the demand for the products of this industry and the deterioration of the industry. But the facts exist. You should have them.

What happened since 1957? Page B-1 of the economic report, Exhibit 6, which it might be helpful for you to look at, as I mention some of these plants, does spell out the history of the industry, in the period 1959-1965. Let's talk about this briefly. The first plant to shut down was Fajardo in 1958, Fajardo Knitting Mills, which I think is not shown on this page, because Fajardo closed in '58. In 1959, Barca, which we see under the heading, Firms Discontinuing Operations, Barca shut down. When it did so, Barca wrote Fomento, the Economic Development Administration in Puerto Rico, that it was closing because, quote, "The cost of manufacture was running entirely too high." Unquote.

In 1960, Caribe, one of the largest manufacturers in the industry, ceased to operate. This was the company that had more than 200 employees and that had been in

Puerto Rico for four years. Caribe closed its doors, wound up bankrupt, owing more than \$700,000.

The year 1960 also saw two significant changes in ownership. Sometex, which you will recall was a pioneer in the industry, having started in 1952, a company which had the earliest foothold, the first chance to develop a market, to train its labor, Sometex underwent foreclosure. Its assets were acquired by Sigo, which has been struggling to survive, [86] as you can tell from its financial statements, which we will have an opportunity to look at later. Its assets were acquired by Sigo and Sigo has been making a valiant effort, not altogether successful, to survive ever since that time.

Also in 1960, Seaco, having found that it could not make a go of it, sold out to Hannit. You will not find Hannit listed as a company on page B-1. The reason is that Hannit has not even attempted to compete in interstate commerce. It produces solely for the local market. It has a legal minimum rate in Puerto Rico of 80 cents, which was set as recently as August of this year under a local statute which also calls for \$1.25 minimum as soon as any industry can meet that minimum.

This brings us to 1962. There were no closings or companies changing hands in 1961. In 1962 both Southdale and Island Knitting went out of business. In the course of the 1962 hearing before the committee which preceded you by three years, I showed the members of that committee advertisements indicating that Island Knitting was then for sale. At the 1963 hearing one year later, it was my unhappy task to inform the committee that no purchaser could be found for Island Knitting and that the plant had been dismantled. This was two years ago. Nobody could be found to buy this company. It was closed up.

Now, at the 1963 hearing, just about two years ago, I also took occasion to express some foreboding about the future of Knitco, on the basis of financial data which the committee had before it in our prehearing statement. Knitco was then operating at a loss. At that hear-

ing I asked the following questions, and I am now quoting:

"How long can Knitco lose the kind of money it is losing [87] here and be expected to stay? Of what advantage is tax exemption to it?"

Gentlemen, those questions were answered for us in 1964. In that year Knitco closed down, also unable to find a purchaser. That disaster which befell Knitco surely ought not to have come as a surprise to anybody. Indeed, as early as the 1961 hearing the president of that company submitted an affidavit which said in part, and I am quoting:

"We foresee that if we are compelled to endure another increase, our entire position in Puerto Rico becomes extremely vulnerable and we would be faced with certain reduction in personnel, and eventually liquidation of our operation."

Knitco entered a similar affidavit at the 1962 hearing, reemphasizing the danger of further increase in the minimum to its ability to continue in existence.

I really do not mean to be a harbinger of gloom and doom when I ask you to bear the Knitco experience in mind when we reach our discussion of some of the plants which are still in existence, and particularly a good number of plants which are now operating at a loss in this industry.

Well, one may ask, "What about those firms at the top of page B-1 of Exhibit 6 which are described as firms that have begun operations in the period 1959 to 1965?" You have data on all of these firms in our pre-hearing statement and we shall be examining the experience when we discuss the present health of the industry [88] in greater detail. But while we have some general subject before us, let me call your attention to a few salient facts with respect to these seven firms which began operations between the years '59 and '65. Without exception, these plants are offshoots of companies already in existence on the island. One of them, Bonita, manufactures swimwear, not sweaters and in-

deed, does not even manufacture swimwear all year around. As you know, it is in the skirt business which is not even in this industry. Two of these companies are dye plants. They do not manufacture sweaters. Two of them make cut-and-sewn sweaters. The dye plants, incidentally, are Messina and Tinto. The cut-and-sewn plants are Gurabo and Weststone. Of these two which make cut-and-sewn sweaters, one has fewer than 100 employees and one has fewer than 50. One of the plants, Malcolm, has been shut down for a substantial portion of this year.

Finally, Wendy is a plant which manufactures full-fashioned sweaters and has fewer than 20 employees.

Let me call your attention to the fact that the most recent of all of these operations began in January 1963, almost three years ago and that two of the seven of them show losses in their most recent audited statements.

Now, I want to pause at this point to raise with you, if I may, a few rather fundamental, if rhetorical, questions. If, in fact, this industry in Puerto Rico does have a competitive advantage over the mainland, how are we to explain the fact that whereas in the year 1959 there were 15 mainland companies with affiliates in Puerto Rico, there are in the year 1965, only eight mainland companies with affiliates [89] in Puerto Rico? So then, if in fact this industry has anything resembling a competitive advantage over the mainland, how in heaven's name are we to explain the fact that since the year 1957 not a single additional mainland company has come to Puerto Rico for the purpose of establishing a new plant in this industry?

Finally, and perhaps most significantly, if we in fact enjoy a competitive advantage over the mainland, why in the name of all that is logical, could no purchaser be found at any price for the going enterprise of Island Knitting as recently as 1963 and Knitco a year ago in 1964? Where are all these mainland companies who year after year submit as part of their Stateside associations, prehearing statements pleading the press of

other business so that they cannot come here for cross-examination, alleging that Puerto Rico has competitive advantage? These are businessmen. Why have they not come down here and taken advantage of this delightful so-called competitive advantage that this industry enjoys over plants on the mainland?

This brings us close to the present. As we have said many times already in the course of the past 24 hours, this hearing is a successor to a hearing for this industry which took place a bit less than a year ago. The history that I have related to you this morning was all known to that committee. I have not put anything new on the record. What is significant is that really nothing has changed since that time, since the last committee met. It is true that no plants have closed since the last hearing. It is, however, true, that a record number of plants during the year 1964 show losses. It is true and perhaps more significant that since the last hearing there have been no new plants entering this [90] industry, this, despite the fact that the committee saw fit not to increase the minimum rate at the last hearing. As a matter of fact, there has not been in this industry in Puerto Rico a new plant in the last 34 months. In this regard let me call your attention to an advertisement which appeared on page 13 of the Wall Street Journal for September 21, 1965. This is an advertisement which was placed in the Journal by the Commonwealth of Puerto Rico and its headline reads:

"The Average Net Profit for United States Manufacturers in Puerto Rico is almost Three Times that of the Mainland and Twice as High as in Europe."

The only part of the advertisement that I want to read into the record at this time is the following sentence:

"Now plants are coming to the island at the rate of almost four a week."

This is great. This is great news in Puerto Rico. Its great news for everybody. Unfortunately, it does not apply to the Sweater and Knit Swimwear Industry.

Plants are coming to Puerto Rico at the rate of almost four a week and in the only industry on this island for which there is a minimum wage hearing this year, there has not been a new plant in 34 months. Mr. Chairman, I don't care whether this gets in the record as an exhibit or not. I don't want to burden the record unduly. I would be happy, however, to pass it around if the committee wants to take a look at it. It's available for anybody who wants to see it.

At the time of the last hearing the condition of the industry was indeed a desperate one. Consider, for example, the following indices [91] of its health, which are a matter of record and which were brought up at the last hearing a year ago. At that time it was demonstrated that the industry was suffering from a drastic decline in employment. Net profits had fallen to a danger point, indeed, to a point where it would have been much more profitable to invest in government bonds, than to operate a sweater plant in Puerto Rico. Shipments for the year 1963, the last full year on record before the 1964 committee, shipments for the year '63 were shown to be well below the figure for 1962, that is, shipments from Puerto Rico to the mainland. The situation in the industry at that time was sufficiently unhealthy for the committee to find that despite the fact that the volume of shipments for the first nine months of 1964 were higher than for the first nine months of 1963, the industry did not enjoy a competitive advantage over the mainland and that any increase in the minimum could cause a substantial curtailment of employment. Accordingly, your predecessors recommended that there be no increase in the minimum. Incidentally, let me point out to you that the public members of that committee, Mr. Villaronga, Mr. Jose Noguera, who is the former Secretary of the Treasury of the Island of Puerto Rico and Mr. Lloyd Bailer, distinguished labor arbitrator, were unanimous in their recommendation.

Gentlemen, when the shipment figures for the full year 1964 became available, the year, you will recall, when the first nine months ran ahead of the nine months of '63, when those shipment figures for the full year 1964 became available, they revealed even more dramatically the plight of the industry, where they reversed the trend for the first nine months and showed a decline in shipments as [92] against the full year 1963. \* \* \*

\* \* \*

[102] THE WITNESS: \*\*\* [103] These employees work for the Northridge complex. I invite your attention to a summary of the financial statement for those companies appearing on pages 39 and 40, which shows for Northridge itself, a profit in the magnificent sum of \$864.00 for the year ending December 31, 1964, a decline for Weststone for that year and a profit in dollars a bit more for Midland than the previous year.

CHAIRMAN HORLACHER: Let's take a recess.  
(Recess taken.)

CHAIRMAN HORLACHER: Back on the record.

THE WITNESS: I would appreciate it if the committee would turn to page 23 of Exhibit 13. Here you will find a table which we have called, Selected Minimum Wage Rates in Puerto Rico Under the Fair Labor Standards Act. These come from the United States Department of Labor. The selection is a selection of other apparel and textile industries. It's made solely for the purpose of demonstrating to you that with the exception of the Mattress and Pillow Classification, in the Textile and Textile Products Industry, the minimum rate of the Sweater and Knit Swimwear Industry is higher than that for any of those shown, higher than Children's Dresses; Corsets, Brassieres; Hosiery; Needlework, and fabricated textile products, and Women's and Children's Underwear, in some instances, substantially higher. So you are not talking about low rates in Puerto Rico when you are talking about the Sweater and Knit Swimwear Industry, certainly not in comparison to other members of the same general family of industries.

We have on page 24 what is perhaps a more significant demonstration of how this industry measures up against others. I regard this data as [104] sufficiently important --

MR. SCHWARTZ: Pardon me. On page 24 you said that this was significant in relation to others. I don't know what you are comparing it with. It's information on that same page you are making a comparison with?

THE WITNESS: Yes. I'm about to spell it out for you.

MR. SCHWARTZ: I'm sorry.

THE WITNESS: Mr. Dubinsky testified before the Senate Labor Committee in July. He made the following statement which I accept as accurate, particularly since he had his distinguished director of research sitting with him at that hearing, and he said, and I quote:

"The average manufacturing wage last February was \$1.23 in Puerto Rico and \$2.59 in the States."

What I am pointing out, Mr. Schwartz, is that in the Sweater and Knit Swimwear Industry in Puerto Rico the average straight-time hourly earnings in the same month of February 1965 amounted to \$1.27, in comparison to an overall average for Puerto Rico as set forth in that testimony of \$1.23.

Let's go further. According to Mr. Dubinsky's testimony the average manufacturing wage in the United States, that is, in the States, on the mainland, last February, was \$2.59. Now we see that the average hourly earnings in Puerto Rico in February were four cents more than the average for Puerto Rico as a whole. What about the average hourly earnings in the Knit Outerwear Industry, for example, on the mainland as against the average on the mainland as a whole? We find that whereas in sweaters and knit swimwear in Puerto Rico is four cents more than the [105] Puerto Rican average, knit outerwear on the mainland is 75 cents and for women's and misses' outerwear n.e.c., it's 88 cents, below, not above, below, the mainland average.

If you will turn to page 25, again there are some interesting comparisons to be made between this industry and other industries on the island. Purely as a short-cut, I am just going to read you a few of these figures. You will find on the lefthand side, Total Employment of Production Workers, in all of EDA plants in Puerto Rico. You will find that in 1965 compared with the year 1962, it shows an increase of 20.2 percent.

MR. TEPER: Mr. Chairman, clarifying question. Isn't it a fact that the table on page 25 deals with employment in Puerto Rico manufacturing both for local and interstate commerce, and that it is not confined to EDA plants? You indicated it was EDA plants only.

THE WITNESS: Yes, it's true. I suggest the difference is truly nominal. The total production workers on the island are 20.2 percent from '62 to '65. Apparel and Related Situations, up 17.7 percent, from '62 to '65. Textile Mill Products, up 17.3 percent, from '62 to '65. Sweater and Knit Swimwear, down nine percent, from '62 to '65. I will not burden the record with these figures at this time. But I think it might be instructive for you if you made some of these comparisons between '65 and '64, although you will not be able to make them from this table for the Sweater and Knit Swimwear Industry because these figures were amended yesterday. As a matter of fact, the down nine percent would be modified to a very nominal extent because the correct figure for Puerto Rico as of August '65 is 2,344, so it would not be [106] nine percent less, but the correct figure is 10.7 percent less for Puerto Rico for sweaters and knit swimwear, comparing '65 to '62.

Now, how about average hourly earnings. If you look at the bottom of the page you will find that for all industries the average hourly earnings figure in August '65 was \$1.23, for Apparel and Related Situations, \$1.14, Textile Mill Products, \$1.20. We do not have the August figure for the Sweater and Knit Swimwear Industry, but we do have the February figure, you will recall, of \$1.27. Interestingly enough, what you find is that in the

face of a substantial decline in employment, not only absolutely, but relative to other situations on the island, you nonetheless find a situation of substantially greater earnings in this industry than in the average for the other situations cited.

Now, would you be good enough to turn to page 27?

MR. TEPPER: May I ask a clarifying question before page 25 is left? Did I understand you correctly that a change from 2,625 to 2,344 is minus 10.7 percent, instead of minus nine percent?

THE WITNESS: The change from 2,625 to 2,344, on the basis of a rough calculation --

MR. TEPPER: It's nine percent.

THE WITNESS: I would amend my statement simply to say that Dr. Teper says it's a nine percent decline in employment. For present purposes I will accept the fact that employment according to his figures on this island in this industry has declined between 1962 and 1965 by nine percent.

MR. TEPPER: May I ask a second clarifying question? Isn't it a fact [107] that the data you have for the Sweater Industry is non-comparable with other data on the same page because the other data represents average employment for the year, whereas the sweater information is solely for a single week of the year?

\* \* \*

THE WITNESS: \*\*\* [108] Again, I do not want to put too much of a stress on this. The graph speaks for itself. It will give you some idea of how sweater employment has been faring in contrast to the other ladies' garments industries on this island with which the ILGWU does have a legitimate interest. I do want to point out while we have this graph before us, that Mr. Dubinsky, and I regard it as a privilege to quote from his testimony which I accept, before the Senate Labor Committee, Mr. Dubinsky in his testimony of July 14, 1965 pointed out that the brassiere industry in Puerto Rico in the year 1964 manufactured brassieres, the total quantity of which comes to 43 percent of the total prod-

uction of brassieres in the United States. 43 percent. Contrast that, if you will, to the three percent figure that we are talking about as the share of the total market, the declining share of the total market, that the Puerto Rico Knit Swimwear Industry enjoys. Let me further point out to you, that the brassiere industry which has 43 percent of the total United States production, has a legal minimum wage under this program set by a committee such as yourselves, of \$1.125. Finally, let me point out to you that the profit for the brassiere industry in Puerto Rico as shown for the year 1963, the most recent figure available in the EDA report for 1963-64, constituted 13.1 percent of sales. The same EDA report showed sweater profits as constituting .2 percent of sales, 0.2 percent of sales, the government document based on income tax returns.

I suppose, Mr. Chairman, I could summarize what I have been saying with respect to sweaters and brassieres, by saying that what you have here is a rather unique situation of sweaters shrinking, while brassieres are expanding.

\* \* \*

[111] MR. SCHWARTZ: Mr. Chairman, I wonder if Mr. Cooper would have the information available on the distribution of those shipments between circular goods and full-fashioned goods in women's wear?

THE WITNESS: Monthly figures? No, I don't. The difference between the two? The only thing I have, Mr. Schwartz, which is typical of these monthly figures, is a release of the Bureau of Census dated November 5th. It just came out last week. If you want the August figure I would be happy to let you see it, showing dozens shipped in August of '65, sweaters; women's, misses' and juniors' apparel, August, 1965. Dozens shipped, 888. This shows the percent change in August '65 as against August '64, of plus 23. Twenty-three percent more women's, misses' and juniors' sweaters shipped in August '65 than in August '64 on the mainland.

MR. SCHWARTZ: I guess my question might not have been clear. I meant whether you happened to have figures available comparing shipments of full-fashioned goods as compared to circular goods in the women's field. If you don't, okay. It would be helpful if we had it.

THE WITNESS: I'm sorry. I do want to point out nonetheless that this August figure 888 does, according to the Bureau of Census, represent a total 23 percent higher than August 1964 and 17 percent higher than the revised figure for July 1965.

MR. YAGODA: Might I also ask, Mr. Chairman, what the significance of those figures is, or are they figures in parentheses for June and December next to the figures given?

THE WITNESS: Yes. They are six months figure, Mr. Yagoda. When we compiled this the Department of Labor had published its blue book [112] on the basis of six months comparisons. Obviously, the figure on the bottom is the sum of the two six months periods.

\* \* \*

[114] What is the prospect? Even below the first eight months of the year, of that year which was the lowest year in the history since 1959, with the very minor exception of the year 1961. Now, this data is comparable to what Mr. Teper shows. Again, in full tribute to him, I think it's in somewhat better form on Page D of his prehearing statement, Table (A) and Table (B). I hope you will bear this in mind when that discussion ensues.

Now I want to talk to you about what has happened to value. The figures introduced by Miss Beck show that whereas there was a decline in total volume for the first eight months of this year there was a clearly marked increase in total value for the first eight months of this year. Now, what does this mean? I think it's very important first of all that we understand what we are talking about when we talk about value. After all, value is no more and no less than the cost of

the products manufactured, plus any profit or minus any loss. This is what we are talking about. So when you consider value, what you have to look to are the statements of the companies before you. Unfortunately, by virtue of the time periods involved, the only audited statement that is available to you covering this period are those for the five Gordon companies because they do go through at least the first six months of 1965. You have full year audited statements for part of the industry which constitutes perhaps one-third of the volume, or close to it, and close to one-third of value.

There is one other source to which you must look when you talk about value. Exhibit 6, the economic report, sets forth in Appendix C some [115] basic data about these companies. You will find as you look at various of the firms, that they manufacture sweaters of varying prices and presumably of varying qualities. For example, if you will take a look at Gordonshire, page C-8, you will find that their finished sweaters sell from \$4.00 to \$5.00 each, \$48.00 to \$60.00 a dozen. If you look at Yauco on page C-18, you will find at the bottom of the page that their prices range from \$30 to \$100 per dozen. If you take a look at Northridge, page C-11, you will find that their products are priced to sell from \$18 to \$38 per dozen. So that what you have here is differences in product mix. Clearly, some sweaters cost more than others to manufacture. Clearly, some sweaters are made at one time and others at another. Clearly, the basic figure to look at when you see a value figure is to see how much of this is cost and how much of this is profit. When you talk about competition with the mainland, I suggest to you that the appropriate concern is not the value except insofar as value shows the greater profit which the industry is able to enjoy because of some alleged competitive advantage, but rather, what share of the volume of sweater sales does the industry here enjoy, compared to the mainland, and if its share is going up, going down or remaining constant.

Now, let me give you just one illustration of what I have been talking about in this discussion of value. May I ask you, please, to turn to the Gordonshire statement of income for the sweater division for the year ended June 30, 1965, on page X-30, at the end of the text where all of the financial statements are. If you look at page X-30, and also be kind enough at the same time to take a look at page X-37. These are Arthur Andersen audited statements for the sweater division of the [116] Gordonshire company for the fiscal years ended June 30, 1964 and June 30, 1965. Gordonshire is the largest manufacturer of full-fashioned sweaters on the island. What does this show for purposes of our present discussion? Well, that net sales for the year ended June 30, 1964 were \$3,732,000; for the year ended June 30, 1965, net sales jumped to \$5,408,000, or in one year, up by approximately \$1,700,000. If you look directly below the net sales figures for both years you will find some interesting comparisons of costs and expenses. Take a look, for example, at what has happened to material costs, to finishing and dyeing costs, to employment costs, to other overhead and administrative expenses. What do you conclude? You conclude that while sales increased by \$1,700,000 in the space of one year for one company, the largest, the net loss also increased from a loss of \$234,000 in the year ending June 30, 1964, to \$399,000 for the year ending June 30, 1965. In short, all I am trying to get across to you, using this example of the one firm for which we have a year's audited statement, is that if you are going to suggest to me that because Gordonshire's sales went up in one year by \$1,700,000, Gordonshire must have a competitive advantage with the mainland or Gordonshire surely is in a position to increase its minimum wage, I would have to say to you that you are not looking at the whole picture. So much for that.

Let's get back now to a brief summary of what we have been talking about insofar as shipments and production are concerned. Since the data which was made

available to your predecessor committee, we find that the economic conditions of this industry have indeed changed.

\* \* \*

[120] THE WITNESS: \*\*\* [121] that Table H shows; and again I take my hat off to him, I think this is a clear demonstration that profits have gone up on the mainland. If you take a look at Table H while it has been called to our attention, of Exhibit 12, if you take a look at net profits to net sales for the Knit Outerwear Industry as set forth in Mr. Teper's exhibit, you see what has happened. For example, just in the last three years net profits have gone from 1.20 percent to 1.76 percent, up to 2.18 percent. I am going to ask you to compare these figures. Let's take the preceding year, as well, '61, because I am going to ask you to compare this figure which shows .90 percent, to figures for Puerto Rico.

Now, if I can get back to page 38 which shows FTC-SEC figures for textile mill products and apparel and other finished products. I am going to ask you, for purposes of a better understanding and better comparison, I am going to ask you to add some figures here, because the comparison I am going to make, very frankly, are the first two quarters of 1965, the most recent data, with the comparable quarters for '64 and '63 for textile mill products. For purposes of this discussion I will be happy to answer any questions with respect to it. For purposes of this discussion you can ignore, as far as I am concerned, the third and fourth quarter figures shown here. I am going to ask you to add in for textile mill products for the first quarter of 1962, the following figures opposite net sales, \$3,413. Opposite net operating profit, the figures, 160. Opposite, as a percent of net sales, the figure, 4.7. The first quarter of 1963 is there. For the first quarter of 1964 I would ask you to insert, if you can, before the figures for the second quarter of 1964, the following figures opposite [122] net sales, \$3,760. Opposite net operating profit, 178. Opposite, as a percent of net sales, 4.7.

Now would you be good enough to do the same thing for apparel and other finished products? For 1962, the first quarter, opposite net sales, \$2,946. Net operating profit, 82. As a percent of net sales, 2.8. For the first quarter of 1964, net sales, \$3,341. Net operating profit, 109. As a percent of net sales, 3.3. What do you find? If you take a look first at textile mill products which I believe includes the Knit Outerwear Industry on the mainland, if you take a look at textile mill products, you will find for the first two quarters of 1965, net profits as a percent of net sales, admittedly before taxes, are seven percent for the first quarter of '65 and 7.4 percent for the second quarter of '65. If you take a look at apparel and other finished products, net profit the first quarter of '65, 3.4, the second quarter of '65, 3.7. The second quarter of '65 as well as the first quarter of 1965 for both of these categories proved to have been better periods in terms of profits as a percent of net sales than the comparable quarters for the years 1962, 1963 and 1964. How then has the mainland industry been hurt when you compare it to an industry whose profits have not only been going down, Mr. Chairman, but unlike any other industry, again, that I can think of, are in fact lower, audited profits lower in Puerto Rico, than they are for admittedly a larger grouping, but necessarily so, of industries on the mainland of the United States?

Beginning on page 39 is a summary of the profit and loss data for the 18 firms included in this prehearing statement. For the fiscal year ending in 1964 you will find six companies showing a loss. For the most [123] recent fiscal year, that is for every year this would be ending December '64, except for Gordonshire, which ends in June of '65, for the most recent years I am happy to report that the number of losses have been cut from six to four, although the total picture is worse. Of the 18 firms shown here, eight are in a worse position now than they were a year ago. This data is sum-

marized on page 47. Before you turn to page 47, I do want to point out one or two other things to you from this table.

MR. SCHWARTZ: Mr. Chairman?

CHAIRMAN HORLACHER: Yes, Mr. Schwartz.

MR. SCHWARTZ: I wonder if Mr. Cooper would hold it for one second?

THE WITNESS: Of course.

MR. SCHWARTZ: So I can better understand page 39, I'll use an example that hits the eye. I could use others. On Weststone, as an example, for operating profit or loss for '64 it says \$62,000 and has a percentage of sales figure of eight percent. Then you made reference to the H Table of Exhibit 12 showing a different percentage. Do you want to make any comment about the relationship so we can better understand it?

THE WITNESS: I don't understand your second reference.

MR. SCHWARTZ: H page of Dr. Teper's Exhibit 12. I didn't know whether you meant to compare this or not, or whether you meant to compare it at that time.

THE WITNESS: My only purpose, Mr. Schwartz, I'm sorry if I did not make it clear, but my only purpose was to make it show that on the mainland of the United States the best profit figures available indicate [124] an increase in profitability for the industry. The best profit figures available indicate over the last few years an increase in profitability on the mainland of the United States. The best profit figures available, audited statements for 18 of the 19 companies in this industry, indicate during the same period, a decline in profitability. The only conclusion that I would call your attention to is that as a matter of fact we have now reached the point where profitability as shown in these audited statements is lower in Puerto Rico than it is for the industry on the mainland of the United States. Let me make one or two other things clear in this respect, Mr. Schwartz. I am not claiming that there are not profitable companies in

this industry in Puerto Rico. As a matter of fact, the most recent Fomento statistical report; here is a copy which I will be showing to you I hope before this morning is out. It may run into the afternoon, but the most recent Fomento report covers the fiscal year '63-64. That report shows the average profit of all Fomento industries in Puerto Rico for the year 1963, net profit on net sales, to be 14.4 percent. Now, we are going to be getting to the profit figures for the sweater industry as a whole in a moment. But I don't want you to think I am trying to hide any of these companies, Mr. Schwartz. The fact is, of the 18 companies in this prehearing statement, there are three companies which in their most recent audited statements proved to be better than the average for all industries in Puerto Rico. Three companies. One is Tinto, which is a dye company, and it has in its most recent employment; I am not sure whether this is one that was changed by the figures or not. Can you help me out on this?

[125] MR. TEPER: It was not changed.

THE WITNESS: Tinto was not changed? Thank you, Mr. Teper. I'll accept that. Tinto in its most recent employment had 28 employees, Mr. Schwartz, and Tinto did show a profit of 25.4 percent in the most recent fiscal year, with 28 employees and a total profit of \$92,000 on sales of \$360,000. Wendy also exceeds the average for Puerto Rico. Wendy, which is a sweater plant, Wendy in its most recent figures showed 16.6 percent, net profit as a percent of net sales, quite a decline from the previous year, but admittedly, a pretty good profit figure. Wendy has 15 employees. Textile Dye, which this committee has seen fit not to admit as a party, but as a witness, Textile Dye is the third of these companies whose profit as a percent of sales; and in every case here, I should point out that I am talking about net operating profit. This has no relationship to profit from investments. Therefore, it may not be strictly comparable to the 14.4 percent average. I am only doing this because of your question as an example

of what some of the companies have done. Textile Dye does show a profit for its most recent audited year of 17.8 percent. Textile Dye began as a dye house. It does not actually manufacture sweaters like Tinto. Textile Dye has 40 employees. So that, bearing in mind the qualifications that I have just made, you do have companies with a total of 83 employees, out of some 2,000 employees in this industry, three companies out of the 18, who do show in excess of the profit picture for the average industry in Puerto Rico. I do not want to cover that up. We are talking about an industry and we are talking about the profits for an industry when we are making these comparisons. I want to ask you one question again, a [126] rhetorical question, obviously.

\* \* \*

[135] THE WITNESS: Surely.

(Whereupon Exhibit No. 18 was marked for identification.)

MR. FEIRTAG: But you did say that everything in here that you want to refer to is repeated in your statement?

THE WITNESS: I don't adopt that statement. Mr. Teper said that, I did not, and it is not.

This is called the Annual Statistical Report of EDA Manufacturing Plants, 1963-1964 Edition. The table to which I am making reference is entitled "Payroll and Profits Related to Sales: by Industry and Profit Status," and there follows a list of all of the industries in which EDA has an interest. And on the first page of this table, page 44, oh, about midway down the page there, appears Sweater Knitting Mills, not the sweater industry, sweater knitting mills, and 12 plants are listed. And these are in fact accurate figures with respect to the number of companies within this industry which do knit rather than dye or finish or make swimwear. There are 12 sweater knitting mills out of the 19 plants in the industry, and it is for that reason that the figure shown for 1963 is not the figure which we have shown for the sweater industry of profit for 1963 which, you

will recall, was -- well, this was operating profit, of course. We showed a figure of 2.5 percent. Net profit as a percent of sales would be slightly higher than that for 1963. We are not talking now, in the EDA report, about the totality. We are talking here about the 12 plants which, of course, constitute the core of the industry. There wouldn't be any finishing, there wouldn't be any dyeing -- there might be a swimwear plant, but there certainly [136] wouldn't be any finishing or any dyeing were it not for the existence of these 12 sweater knitting mills.

And what do they show? They show, according to not the industry but according to the Economic Development Administration of Puerto Rico, a figure for profit as a percent of sales for fiscal years ending in 1963 -- so that presumably they are using the Gordonshire previous year figures rather than subsequent year figures, if I make myself clear, because these are fiscal years ending in 1963 -- they show a profit as a percent of sales for these 12 sweater knitting mills of 0.2 percent. And I am going to ask you to make two or three comparisons, bearing in mind that we are using 1963 data because it is the most recent available, and bearing in mind, from the evidence which we have already put into the record, that the year 1964 was worse for the industry as a whole, certainly, than the year 1963, and the year 1965, insofar as the Gordonshire complex is concerned, is worse than previous figures. Be that as it may, what you have got for 1963, then, is a profit of 0.2 percent. And the figure immediately to the left of that is also a rather interesting figure. It shows payroll as a percent of sales. And payroll for these sweater knitting mills in this table is 22.6 percent.

Now, let me summarize this for you in as shorthand a fashion as I can. There are on this total table, according to my count, 97 industries listed, 97 separate EDA industries listed. Among these 97 industries -- again, according to my count, subject to anybody's better arithmetic than mine, but as I have counted them up, out of these 97 in-

dustries, sweater knitting mills is 85th in profits in their rank. And, on the other hand, out of the 97 industries sweater knitting is [137] 26th in payroll as a percent of sales.

You will recall that this morning, in answer to a question from Mr. Schwartz, I pointed out to you that the average profit of all EDA industries for the year 1963 as a percent of sales was 14.4 percent. And what I am going to ask you to do is to compare in your mind, if you will, the figure of 0.2 percent for sweater knitting mills to the average profitability of 14.4 percent for all industry. And at the same time, and finally in this respect, it might be of some interest to you to compare the figure of payroll as a percent of sales, which I have just cited to you as 22.6 percent for sweater mills, to the average of payroll as a percent of sales for all industries shown at the end of this table on page 48 as 12.7 percent.

Now, I think I have made the point that profits are down and are bad, by whatever comparison one wishes to use, with respect to the situation in this industry in Puerto Rico. And in bringing my direct testimony to a close, I want to turn back to the situation on the mainland of the United States and I will ask you, if you will, to take a look at those pages of our prehearing statement which begin with page 53.

From page 53 through page 58 we have submitted excerpts from trade journals in the mainland of the United States, which might perhaps give you a slightly different picture than you would be led to have if you were to rely solely on the prehearing statements submitted as Exhibits 8 through 11 insofar as the health of this industry on the mainland is concerned.

Let's run through a few of these very briefly.

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[150] MR. TEPER: That is correct. I am delighted to have 18.

CHAIRMAN HORLACHER: Mr. Feirtag, do you have any questions?

MR. FEIRTAG: Yes.

MR. KELBERG: Mr. Chairman, may I take one moment to point out that the letter in question was addressed to Mr. Kelberg, that I am present, and that I take notice of that which Dr. Teper said, and I would respectfully point out that this record on previous hearings indicates that Dr. Teper had apologized to a committee for the statements he had made concerning certain of the principals whom we represent; and I shall not formally ask for an explanation nor for an apology, but I do want this record to show that I have noted Dr. Teper's statement concerning the mysterious holes in the paper of which he states he does not know, but that he found certain staple holes.

Thank you, Mr. Chairman.

#### EXAMINATION BY MR. FEIRTAG

Q. If the industry were to be looked at without the Gordonshire group, you would have a different picture, wouldn't you? A. Of course you would have a different picture.

Q. Can you explain why the profits of the Gordonshire group are so different from those of the rest of the industry? A. Well, you would have a different picture just as you would have a different picture if you omit any of the firms, Mr. Feirtag. Let's take a look at some of these.

Q. It seems strange to me, and I suppose to the committee members, that the largest company would be so much less profitable than all the other companies in the industry. [151] A. Mr. Feirtag, it seems very strange to me, and very troubling to me. If you turn to page 39, it is very troubling to me that a company like Northridge would drop from a profitability of \$212,000 in 1963 to a profitability of \$864 in 1964. It is very disturbing to me that a company like Rosita, which shows, on page 40 -- and whose president is here as a member

of this committee and I hope will not be embarrassed by what I say, but it is very strange to me and very disturbing that a company such as Rosita, which showed a profit of 20.3 percent on sales in 1962, went down to 3.3 percent in 1963 and 0.08 percent in 1964. It is an extraordinary way for a tax exempt company to show profits. I am very disturbed by what has happened to Glamourette. If you take a look at page 40 you will find that as of 12/29/62 the audited statements for Glamourette showed a profit of 11.4 percent. These profits also disappeared. From a profit of \$154,000 in 1962, we find virtually nothing, indeed, a loss.

Now, why has Gordonshire acted the way that it has? I can only say to you that this is a question which has plagued us for several years now. It has plagued the Gordonshire Company, I want to assure you, a great deal more than it has plagued you and me. There was a time, when we first came here some four or five years ago, there was a time when Gordonshire showed some rather handsome profits, if I may say so. No question about it. What has happened is something to which I cannot give you a concrete answer, other than to say that for one reason or another the Gordonshire company has lost ground to the point where it, once one of the truly great, once one of the giants in Puerto Rico, is at the point -- they have not told me this, but it seems [152] apparent they must give consideration to the question of, you know: How long do you try to recoup these losses before you give up the ghost? And what is it attributable to? It could be attributable to any one of a number of factors. Is it attributable to wage increases? I have not suggested that. Are their wages high? Compared to other industries on the island they are high. Compared to the mainland of the United States, the ratio of the wages of this industry is a great deal higher than the ratio of wages of many other industries to their companions in the United States.

I am not an employee of Gordonshire's. I am obviously not a part of their management. I can only give

you the facts which are relevant to this proceeding and, for whatever reason, it is clear that in excess of 25 percent of this industry, the Gordonshire complex, is going very, very badly indeed. But don't for a minute, don't for a minute assume that the problems of the Gordonshire complex are peculiar to Gordonshire, maybe their own problems are, but don't assume that this is the only enterprise in this industry which isn't going well.

I pointed out, in reply to Mr. Schwartz before, that there are only -- what? -- three companies, you will recall, which are doing exceedingly average in Puerto Rico, companies with a total of some 83 employees, one of which, incidentally, is a Gordonshire company. Tinto is doing very nicely. It shows a 25.4 percent profit.

Q. Going on to discuss Gordonshire further, before, you gave us this interesting comparison between their sales in 1963 and 1965, indicating a change from \$3 million to \$5.1 million. Would you also have the corresponding figures for dozens of sweaters sold in those years? [153] A. For Gordonshire I don't have them. Whether they are available or not, I don't know.

I do not have the data of dozens for Gordonshire, I'm sorry.

Q. As I understand it, the reason why you made that comparison -- A. I'm sorry, which comparison?

Q. The comparison between the \$3 and \$5 million. -- was that even though the value of the sales had increased, their losses continued to increase. A. I was simply trying to demonstrate there is no necessary relationship between value and profitability.

Q. But that would not explain why value would go up while deliveries would go down. That is a rather strange situation we have. A. Well, of course, the explanation is in terms or must be in terms of the cost of the materials used and the product mix as a result. What kind of sweaters are they making? Is Yauco today shipping sweaters worth \$30 a dozen or are they shipping sweaters worth \$100 a dozen? I honestly don't know. North-

ridge, it tells me here in the blue book, which is my only source for this information, shipped sweaters valued between \$18 a dozen and \$38 a dozen. What is the market calling for today?

Look. All I can say to you, Mr. Feirtag, is that you have got all the raw material here. You have got these statements. You have got these financial statements. You have got what has happened to net sales; you have got profitability; you have got figures on cost of production. Unfortunately, because of the time of year when we are sitting, unfortunately, you don't have audited figures for full years for [154] anybody other than the Gordonshire group, so that you can't really get a full picture of what is happening there.

In any event, let me suggest to you, in any event, don't get away from the function that this committee is here to perform. They are here to perform the task of determining whether there is a competitive advantage which exists or may exist against the mainland, and I suggest that units is a measure of that. I don't understand how value could be, unless it reflects itself in profitability, and where there are no profits, what difference does it make what the value shows?

Q. Well, except that you get into a situation which is difficult to explain unless, let us say, Gordonshire was switching to much more expensive sweaters. If they just shipped more sweaters, that wouldn't explain why deliveries would go down while value would go up. The only thing that would explain deliveries going down and value going up is if the same company switched to more expensive sweaters. A. Well, all I can say to you -- without having figures, and I am speculating -- Gordonshire is by all odds the largest manufacturer in this industry. Sweater shipments have gone down. It would be extremely unlikely if during this period of time Gordonshire's shipments had bucked the trend, you see, and gone up. If Gordonshire's shipments had in fact showed a rise during this period, it would so weight the total of

the industry that some of these companies shown here must truly have had a desperate fall-off in shipments.

So that all I can say is that from the evidence available to me, as well as to you, it would seem that shipments must have declined rather substantially.

[155] Q. Would you also say that the value of each sweater must have gone up that is, the average value?  
A. I think that follows.

Q. It must have gone up a great deal? A. I think that follows.

Q. Isn't it usual for there to be a larger margin of profit on an expensive sweater than there would be on an inexpensive one? A. I can't comment on this because I don't know the answer, but I would find it very unlikely. You know, there was a company -- every year Mr. Teper enlightens us about why Seaco went out of business, and he tells us that the reason Seaco went out of business was because Seaco thought they could produce a real fancy expensive sweater, and they were making sweaters designed to sell for, I think, in excess of \$200 a sweater. Does this mean that the rate of profit on those sweaters was good? Obviously not. The market fell out. There are any number of things.

You can say, for example: Look at what is happening with imports. Well, are there cheap imports which are coming in, which are forcing companies against their will to shift into the production of more expensive sweaters? Are the style demands such that they are being required to ornament their sweaters more, to go to cashmeres instead of other less expensive fabrics? This is speculation. This will appear, what has happened -- I must say, with all due respect, I hate to say this, I don't mean to pass the buck, but I think your question requires this answer. All anybody can do is speculate. Speculation on the basis of this kind of data can be a dangerous thing, and that is why I reluctantly [156] indulge in it.

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Q. What I am getting at is if you had, as late as 1963, two new [157] plants built when the minimum wage was about the same. A. It wasn't about the same. This wage went up at the end of 1963. These plants opened in January 1963, as a result of planning done in the year 1962.

MR. FEIRTAG: I see. That is all I have.

CHAIRMAN HORLACHER: Do you have any questions, Miss Beck?

MISS BECK: Yes.

#### EXAMINATION BY MISS BECK

Q. Mr. Cooper, has the Gordonshire group changed any of its styles or its products of sweaters in the last year? A. I do not know.

Q. I am still not clear, when you gave the explanation of Gordonshire's increased costs and increase in sales, whether that was an explanation, a complete explanation, for why the value of shipments as reported by the Census have increased so in 1965. A. It certainly wasn't a complete explanation. It was an explanation only with respect to the Gordonshire group, and the only reason it was confined to the Gordonshire group is because here you do have full audited statements that you can compare from year to year, and what they demonstrate is that you have to be very careful, when you start talking about value, before you jump to any conclusions that value means profit. What does value mean? You are an economist, Miss Beck, and I am not.

I have always pursued the notion -- if I am wrong, I am sure that Mr. Teper will correct me before this hearing is out, but I have always pursued the notion that value is really nothing more than the cost of [158] goods plus or minus the profit, and when you know the profit or lack of profit and you know the cost of goods and you see the cost of goods going up and you know this is an industry that is highly stylized with product changes and with considerable variation in prices, as shown in some of the companies that you discuss in your own material

here, you realize that there are no conclusions of profitability or of competitive advantage to be drawn from this increase in value.

I also point out to you that value and shipments have not gone in a tandem relationship in Puerto Rico. There is nothing unusual about the fact that shipments have gone down and value has gone up. It has worked the other way as well. Last year, as a matter of fact, value went down and shipments went up for the first nine months, as you may recall.

Q. In counting the number of plants that were in the sweater and knit swimwear industry in 1957, I think you stated that there were 20 at that time. I wonder, in making this count of plants, if that takes into consideration that some plants may have changed hands and had been considered three plants at that time and now might be one. I had in mind Puritana. And I wondered about that in counting them, and if you did have any other explanation.

A. Well, they are separate entities, and of course this is true. This is a very valid question, and I think you are right. Sure, Puritana is now one plant, when there was Alto, Superior — and what was the other one of those? There were three at one point, and they were consolidated into one plant. That is right. On the other hand, if you take a look at the number of plants they are indicative, really, only of the size of the industry, of course. And a fairer picture of the [159] number of employees — you can have a few small plants more meaningful in terms of production and employment than a few large plants, or a few large plants, I meant, more meaningful than small ones.

The interesting thing here is -- I don't think I made this comparison with 1957, and I really don't think I have that data available, but it is clear that total employment in the industry is down much more than 10 percent between 1959 and 1965. It is also clear that there were 20 plants in 1959 and 19 in 1965, and it is also clear that there have been no new plants, that is, in the sense of new companies coming to Puerto Rico

to take advantage of this great bargain that Puerto Rico presumably offers, since 1957, to start up new operations. And it is also clear that in any sense of the word there hasn't been a new plant that has opened here in 34 months, in contrast to what has been going on in Puerto Rico in general.

Q. With regard to your statement concerning the employment being less than it was in 1962 -- A. Yes?

Q. Do you have any information on productivity, or could that be a reason for change in employment? A. Production is down since 1962. It is a rather unhappy state of affairs. They go hand in hand in this respect. They don't always go hand in hand, obviously. Shipments -- well, let's see. Let's not talk from memory, but from figures. Page 33. 1964 showed shipments of 386,000, roughly. 1962 showed shipments of 460,000. Puerto Rico in 1964 was -- what? About 80,000 dozens less than it was two years earlier.

MR. SCHWARTZ: Mr. Chairman, I wonder if Miss Beck could help me, [160] at least in the question that she asked about productivity as it related to the problem.

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#### EXAMINATION BY MR. BLUM

[161] A. Yes, payroll costs to sales.

Q. Payroll costs to sale. What do you regard this as indicative of? I mean, don't labor costs to sales vary with the labor content of the product necessarily?

A. Yes. I don't draw any great conclusions from this, Mr. Blum, other than the fact that, after all, you are considering the effect of the minimum wage in this industry and you do have the knowledge that wages here are higher than the average, and you do have the knowledge that the labor cost is greater here than on the average. Now, I am not saying that you are going to set your mind on that figure alone and say, "My goodness, what this doesn't show." What it does show, sure, in the chemical industry and many other industries the

labor content is very low, and here it is relatively high. It does show, however, that it is relatively high, and one contributing factor to its being relatively high here are the rates being paid to the employees.

Q. But you didn't present it to show anything to do with profitability or lack of profitability? A. Of course not.

Q. Two years ago, as the record of the hearings will reveal, Mr. McQueeney, of Gordonshire, testified as to the problems that Gordonshire was then facing, and perhaps this is hearsay, but he did refer frequently to the problem of styling. A. Yes.

Q. And to the fact that Gordonshire had been making a line of staple type sweaters and was faced with a change in the market. Could you comment further on how Gordonshire is facing this problem? [162] A. No, I'm sorry, I can't. I have not discussed this problem with the Gordonshire management, primarily because I don't really regard it as any of my business. They are running a company, and I assume they are running it to make money. They are a sophisticated management and they have been in business a long time. I don't know how they are doing it, nor any of the others.

I am getting a little bit uneasy about the emphasis on Gordonshire. Every year we go through this, Mr. Blum. And the interesting thing is that we go through it in the lean years and the good years, and we seem to be going through it for different reasons.

In Gordonshire's good years, if recollection serves me correctly, it seems to me that I have been asked: Why can't the rest of the industry do as well as Gordonshire? Why shouldn't we set a rate in effect based on Gordonshire? Last year, when we came up with some very bad figures for Gordonshire, there was a serious suggestion that a rate for this industry should be set absent the Gordonshire figures, absent 25 percent of the industry, and there were all kinds of tables presented which omitted the Gordonshire figures.

Now, neither approach is correct, obviously. I am

sure you will agree with this. This is one element of an industry, and it is an element of the industry which has serious problems, but isn't the only one with serious problems. You are not going to set a rate on the basis of Textile Dye with its 40 employees, or on the basis of Wendy with its 15 employees. You are going to set a rate on the basis of the entire industry, on Northridge, on Glamourette, on the Gordonshire complex, and so on.

[163] Q. I have just one further question I think perhaps the committee would be interested in.

With respect to Gordonshire or the rest of the other companies, how much are styling problems factors in profitability presently, in general? A. All I can say to that is what has been said before. It is obviously a problem. It is obviously a problem which was not anticipated when this industry started in Puerto Rico. It is a problem which I assume -- I can be wrong about this and I can be in awfully deep water, because I have a handful of experts sitting on my right. It is a problem which I assume the brassiere and women's underwear industry, for example, doesn't have. There is a demand for new styles all the time. This didn't happen in 1952, and it didn't happen for the first five or six years of the life of this industry. The industry was never as highly styled. That is, the demand for the product was never of that nature. This situation has changed.

Now, I have pointed out to you time and again that reasonably coincidental with that change the industry has gone downhill. I assume there is some cause and effect relationship. It would be reasonable that there should be.

MR. BLUM: I have no further questions.

CHAIRMAN HORLACHER: Mr. DeLeo?

MR. DE LEO: No questions.

CHAIRMAN HORLACHER: Mr. Sanchez, do you have any questions?

MR. SANCHEZ: No.

CHAIRMAN HORLACHER: Mr. Schwarz?

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[165] EXAMINATION BY MR. ALPER

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A. Is it [166] something peculiar about these companies?

All I can say to that is that if this were the case, other companies would have come to Puerto Rico in the last few years. There are only eight mainland companies with plants in Puerto Rico. You are a member of a substantial association in New York City, for example. There are many fine knitwear companies on the mainland of the United States who, I assume, are in business to make money, and who I assume would love to be in a tax exempt position if they could make money -- obviously, being in a tax exempt position and losing money isn't going to do you much good -- and who I therefore assume have investigated whether or not they should open in Puerto Rico.

Now, some companies, like Puritan, came down here a few years ago because they were able to purchase -- I shouldn't say "because," but the fact is that some companies like Puritana came down here a few years ago, Rosita is another example, the two gentlemen sitting beside you. And when these companies came down they bought the existing plants and they had the trained manpower of companies which were then doing poorly. I have never questioned these gentlemen about the nature of the transactions which were involved in the purchase of these plants. I assume that it is easier to get a company which is doing badly than to get a company which is doing well, that it makes more sense to buy an existing facility, if you can get it, than to start a new one. The fact is that there isn't a single mainland company -- and surely some of them must have investigated the possibilities -- which has come here since the Northridge operation came here in 1957 to open a new facility for the manufacture of the products in this industry. [167] So it isn't simply a question of saying: There is bad management here now; I could do it better. Nobody has reached that conclusion. At least, nobody has reached

it to the point where they are willing to act on it.

I can't give you a more responsive or complete answer. I wish I could. I don't know.

Q. Yet, wouldn't it be logical to assume that after the number of years that many of these firms have been established here, that the rate of productivity or the efficiency in the plants would improve and increase? A. Well, speaking in the abstract, sure, I think that is absolutely right, and no one has suggested that the workers in Puerto Rico are any less adept or skilled or loyal than they are on the mainland of the United States. If any suggestion is made to this effect I would be the first to dispute it. On the other hand, the facts, based on the question that Miss Beck just asked, certainly wouldn't seem to bear that out as between the year 1962 and the year 1964, for example. It would seem that there has been some drop in productivity, for whatever reason. This doesn't mean that the workers have slacked off. It may have been machinery breakdowns; there may be bad management; there may be bad supervision. I don't know.

The direct answer to your question is: Yes, I agree with you that productivity ought to increase with a period of time. Whether or not it has is another question. It ought to and I think, by and large, in Puerto Rico it has, for an individual employee.

Q. Then it is possible that some of this condition is due to a general industry condition that has become keenly attuned to rapid [168] style changes?

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[169] EXAMINATION BY MR. TITELMAN

Q. Now, isn't it a fact that the problem that plagues the industry is not restricted to Puerto Rico as it is to the rest of the country? A. You are going to have to spell that out.

Q. I will spell that out in this manner. Is there any question in anyone's mind, including yours, as to the changes taking place in the industry with regard to the

style changes? A. I don't know whether there is any question in anybody else's mind; there is no question in my mind as to a change in the industry.

Q. Now, here, is there any question about the fact that here in Puerto Rico it is necessary to keep your pipelines filled at all times, and with the rapid changes that take place, that in too many instances you find, because it is not possible to get things out quickly enough, that there is a deterioration in value and in style and in many other things? A. My clients have advised me that that is the case, and I accept that judgment.

Q. Is it not a fact that in the major centers of the United States -- talking, now, of Philadelphia and New York and Cleveland, and the like -- where they have the facilities to buy and have delivered quickly certain things that are necessary to meet these style changes and to meet the delivery schedules, that they are in a much better position than they are down here? A. Well, I have heard one of the more responsible officials of one of the leading mainland sweater companies which is headquartered in [170] Altoona, Pennsylvania say that very thing, and I have no reason at all to question that conclusion.

MR. TITELMAN: Would you mind telling us who you are talking about? (Laughter)

MR. TEPER: Better not. (Laughter)

CHAIRMAN HORLACHER: It would appear that the committee should take a recess. It is past the hour.

MR. YAGODA: Before we do that, there is one more question.

CHAIRMAN HORLACHER: Would you mind holding it until after the recess?

MR. YAGODA: Whatever you say.

CHAIRMAN HORLACHER: We will take a short recess.

(Recess taken.)

CHAIRMAN HORLACHER: Shall we resume? Mr. Yagoda has a question, I believe.

MR. YAGODA: Yes.

## EXAMINATION BY MR. YAGODA

Q. It flows in part from some other comments that have been made here, or queries, and that is whether or not the witness is in a position to account in some way for the great variances within each year of the peak dollar value shipments. I was looking for a seasonal shape and couldn't find any. For example, in 1939, in July — A. 1959?

Q. Yes. There is a very dramatic contrast from all other months. I am looking at page 33. And in 1960 it is November that has the dramatic contrast. In 1961 and 1962 it does still stay with November, [171] but in 1963 we are back in June, in 1964 it is August, and on the figures thus far it is August again in 1965.

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## EXAMINATION BY MR. TEPER

\* \* \*

[180] A. I have studied some of the Census data for the knitted outerwear industry.

Q. Do you see that they define all these terms such as "contractor," "commission knitter," and so forth, in their reports? A. I am not familiar with their definitions.

Q. But you have no basis for questioning them, have you? A. Of course, I wouldn't think of questioning them.

Q. Good. Now, when goods are sent by a principal, by a company in the States, which has an affiliate in Puerto Rico which operates as a contractor for the stateside company, how is that transaction recorded on the books of record? A. I do not know.

Q. When the contractor in Puerto Rico sends goods to its affiliated company in the States, how is the sale or transaction recorded on the books of record of the contractor? A. I neither know nor did I make any effort to find out, because every company in this industry is guided by standards set down for it by the Treasury Department of Puerto Rico and the Treasury Department

of the United States, and I am satisfied that they all comply with those standards.

Q. Does the Federal Government or the Government of Puerto Rico, their respective treasuries, tell individual companies either in Puerto Rico or in the States how to record their transactions? A. They tell them only that they must deal with their affiliates as if they were dealing with a completely alien company, that they must deal at arm's length and that they cannot juggle their profits or losses [181] so as to benefit one affiliate or the other, and I am satisfied that this is the case in this industry.

Q. Do you have the reference to pages 36 and 37 in Exhibit 13 where you cite from a U.S. Treasury regulation? A. Well, the reference is Revenue Part I, Section 482. It appears in many places, of course. It is 26 Code of Federal Regulations, 1.482-1, and also Part II, Section 45, Regulations 118, Section 39.45-1, entitled:

"Guidelines to be followed in the application of Section 482 of the Internal Revenue Code of 1954 (Section 45 of the Internal Revenue Code of 1939) in cases involving the allocation of income and expenses between United States companies and their manufacturing affiliates in Puerto Rico."

And I have the full document.

Q. Are those the guidelines that were first issued on January 11, 1963? A. These guidelines were issued in 1963, correct.

Q. Prior to that, no specific guidelines existed? A. I do not know whether any specific guidelines existed, but it is clear that prior to that the relationships of companies were scrutinized, with the understanding made clear to them that they were expected to deal at arm's length.

Q. Is it correct that the technical information release which contained the particular guidelines said, in the third paragraph of its Section 1 -- and I quote:

"The guidelines are provided for use in cases in

which there may [182] have been improper shifting of income between a mainland United States company and an affiliate company manufacturing in Puerto Rico"?

End of citation. A. That is correctly quoted.

Q. And from those days on presumably the U.S. Treasury has been looking a bit more closely at the relationships between the Puerto Rican affiliates and their stateside affiliates? Am I right on that? A. I can't draw any presumptions from that.

Q. You don't know of your own knowledge? A. I do know from my own knowledge that the Internal Revenue Service has been very active in enforcing this regulation, yes.

Q. Now, if an affiliated company in the States deals at arm's length with its Puerto Rico affiliate and pays the price, a given price, let's say \$1.00, for a given item, that would be deemed satisfactory to the U.S. Treasury, is that correct? A. I am not sure I understand your question. If it is dealing with its affiliate precisely as it would deal in the open market, or precisely as it would deal with any other company not affiliated with it, in which it had no interest whatsoever, then, of course, the transaction is a proper one.

Q. And if the value of that transaction is \$1.00 per unit, that payment of \$1.00 by the stateside affiliate to the Puerto Rican affiliate would be deemed to be all right? A. That follows.

Q. Right? [183] A. That follows.

CHAIRMAN HORLACHER: I am sorry to interrupt you.

Off the record.

(Discussion off the record.)

CHAIRMAN HORLACHER: Let's go back on the record.

BY MR. TEPER:

Q. On page 37 of your exhibit you say, and I quote:

"Thus, the price which an island affiliate charges a mainland affiliate for its product is required to be that price which the island company would receive from the

mainland company if each were independent and unfiliated, but otherwise unchanged."

Is that the practice followed by the companies represented by you in this proceeding? A. I have no reason to believe that any other practice is followed by them. I should say, Mr. Teper, that I have not asked these 18 companies whether they are all honest. I assume they all are, until proven otherwise.

Q. That is not my question, sir. The question is whether you know -- since you don't want me to ask hypothetical questions, and I would be delighted not to, I ask you whether you know of your own knowledge that this is the practice followed by your clients in dealing with their stateside affiliates. A. I can only answer that by saying they have no choice other than to follow this practice.

Q. That is not my question. A. I do not know of my own knowledge. Does that satisfy you?

\* \* \*

[190] Q. \*\*\* Now, that page X229 shows, does it not, a statement of income and [191] retained earnings for the fifty-three weeks ended January 2, 1965 and the fifty-two weeks ended December 28, 1963? A. It does.

Q. And would you tell me, what losses from operations does it show either in the year 1964 or the year 1963? A. It shows: "Special item - price adjustment for prior years sales, Note 2." And when you look at Note 2 on page 230 --

Q. My question related to profits from operations. Profits from operations. What figure does it show for profit from operations? A. It shows a profit from operations of \$43,439.

Q. For the year ended January 2, 1965? A. Correct.

Q. And the previous year? A. May I finish the answer, please? This is on sales of \$1,206,000, or profit from operations of approximately 4 percent.

Q. But you have been claiming to this committee repeatedly -- and now I am using your tone of voice --

that Glamourette lost money in that year. A. Net income -- loss.

Q. Operating loss. You were referring to page 40. Well, let's turn to page 40. What do you show on page 40 for operating profit of Glamourette for the year ended January 2, 1965? A. I show a loss -- just a minute. I show a loss, and it is based on the fact that net income or loss for the 53 weeks ended January 2, 1965, the accountant tells me, is \$10,205.15, a loss. He refers me to notes in the financial statements, and these notes are here, Mr. Teper.

[192] Note 2 says:

"In July 1964 the company granted a price adjustment of \$57,600.17 on sales of defective merchandise made to an affiliated company in prior years."

Q. So that adjustment is not for the year we are discussing. We are not dealing with operations in the year ended January 2, 1965. A. It is the year in which the accountant saw fit to put the loss. There was either a loss in 1965 or in 1964, whatever the prior year was. The accountant put that in the statement. I didn't put it in the statement, the accountant put it in the statement.

Q. Did you copy it on page 40 under the heading Operating Profit or Loss, or did the accountant do that? A. No, the accountant did not do that, and if you want to question Mr. Kelberg's and my judgment for having put that there, feel free to do so. The fact of the matter is that there was a net loss attributable to operations, attributable to a price adjustment of \$57,000.

Q. In what year? A. Which the accountant has put in for the year -- this is when it was declared to be a loss, for the year ending January 2, 1965, and Note 2 speaks for itself.

Q. But in effect it modifies profitability for prior years to that of 1965. Is that not what the accountant says? A. This is your conclusion.

Q. Isn't that what the accountant says? A. No. The accountant says that the net income for the year [193] ended January 2, 1965 shows a loss of \$10,205, and the

accountant then explains that loss, which the accountant says should be taken for the year.

Q. How does he describe that loss? Does he describe it as a net operating loss?

CHAIRMAN HORLACHER: It is perfectly clear what the facts are. There is no point in beating this horse any further.

MR. TEPER: I fully agree with you, but apparently Mr. Cooper doesn't agree that he unwittingly might have made a mistake.

CHAIRMAN HORLACHER: You are not going to get him to accept your formulation of the facts. The facts are clear to the committee.

MR. TEPER: But this is important, sir, and here is why I am pressing it. Mr. Cooper drew a distinction between net income or loss and operating profit or loss.

CHAIRMAN HORLACHER: This is perfectly clear, Mr. Teper.

MR. TEPER: Now, in this instance he chose to use the lower of the two figures, to wit, the net loss figure, instead of the operating profit figure. In other situations, where the net profit figure was higher than the operating profit, he chose to ignore it, he chose to use the lower one. Now, either it was done on an ad hoc basis, or else it was done in accordance with some concepts and definitions, and that is all I am trying to bring out.

CHAIRMAN HORLACHER: I think you have succeeded.

THE WITNESS: Mr. Chairman, may I make one comment, in view of the distinction between net operating loss or profit and net loss or profit?

[194] I have said this before and I will say it again. I really don't care, it really doesn't matter that much which the committee looks at. I am really not asking the committee to accept my judgment of where a given item goes. There is obviously only one purpose in putting these figures before you and that is to show that

through the years there has been a deterioration of the profit situation of these companies, and the only reason why I attempt to draw any distinction between net profit, which were the figures that appeared originally in the blue book, and net operating profit, or net operating loss as against net loss, is because I do think that it would be helpful to the committee, if, to the extent that you can do so, you not pay attention to items which are clearly unrelated to the sweater industry. If there is an FHA mortgage, for example -- this is true in one of these companies -- from which the company derives a substantial income, or, taking it the other way, if there were an item from which a company made a substantial loss, unrelated to the sweater industry, and you can conveniently pick that item out, it seems to me you have an obligation to do so because I really think that such items are not related.

Now, to the extent that mistakes may have been made, we submit to you that they were made (a) in the best of good faith, and I am sure I need not say that, and (b) that the modification would be meaningless for the purposes of the presentation that we are trying to make.

MR. TEPER: Very fine. We could have gotten through much more rapidly. If you had said this was an honest mistake I was ready to accept it.

\* \* \*

[206] A. You will have to rephrase that question. What do you mean, there was no change in the number of units shipped? You mean from [207] month to month?

Q. In these three months. A. Well, there was an upward -- 9,000 more units in April, 14,000 fewer units in May, and 6,000 more units in June.

Q. On an over-all basis there is not much of a change, is that right? A. That is correct, for those three months.

Q. Right. So here we have a phenomenon of a huge growth in dollars and no change, no substantial change, in units. A. For those three months, that is correct, and we don't have comparable figures for the mainland, unfortunately.

Q. Did you make an inquiry among your clients as to what changes in mix, if any, have taken place? A. No, I have not had an opportunity to do so.

Q. Is it a fact that Gordonshire, when it sends finished goods or goods in the greige to MKM, bills them at cost for raw material? A. I do not know.

Q. You don't know whether that practice is of any duration, do you? A. I don't know whether it exists.

Q. I see. A. I don't mean to be facetious, Mr. Teper. Let me give you a more complete answer about Gordonshire and MKM. What I know about Gordonshire and MKM and their relationship with each other is that they are clearly governed in that relationship by the Treasury guidelines that we have previously been talking about. I also know that when [208] Mr. McQueeney came to testify here, the plant manager for Gordonshire, some two or three years ago -- I have got his testimony available, but I am not going to burden the committee or the record with it -- he did make it clear that they had had a routine visit from an Internal Revenue agent, who carefully scrutinized the books of the Gordonshire Company and gave them a clean bill of health.

Q. Have you finished? A. Yes, sure.

Q. Has anything happened since that testimony -- what was it? Three years ago, or two years ago? A. I don't understand your question.

Q. I mean, you said that as of that time the Treasury gave Gordonshire a clean bill of health. Were there any other investigations since that time? A. Not to my knowledge.

Q. I mean, you don't know, or does this "not to my knowledge" mean -- A. I do not know whether there has been a subsequent investigation or not.

Q. Fine. This is very simple. I take it that after you and your associate received the letter from Mr. Blum, which was identified as Exhibit No. 17, that you or your associate contacted the firm of Arthur Andersen for additional material, is that right? A. It is not your business and I don't choose to answer the ques-

tion, I don't think it is appropriate, unless I am ordered to answer it.

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[215]

LAZARE TEPER

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# DIRECT EXAMINATION

BY CHAIRMAN HORLACHER:

\* \* \*

[216] THE WITNESS: \*\*\* They are now final. No [217] change in information.

On page C in the top table marked (A), the last line, the figure, 263,817, should be changed to 265,016 for Jan.-Aug 1965, the number of dozens.

The dollar volume should be changed to \$17,608,471.

Now, in the bottom table on the same page, the middle column marked, Women's Misses' and Juniors', there are two bottom figures that need to be stricken out; 6,817 becomes 6,775. The next line to be replaced, 3,713. The last line where there is no figure should have 4,269 posted.

If everybody is ready I'll go to page D, Table (A) on the last line where you have the figure, 411,824. It should be changed to 413,023. The value figure next to it should be changed to \$23,785,931.

On the same page, Table (B), also the last line, the figure should be changed in quantity to 265,016 and the value to \$17,608,471.

On page E, the first table marked (A), the column marked, Women's, Misses' and Juniors', the last figure is 6,178 and should be changed to 6,136. The blank space below should be filled with the figure, 7,331.

The last column of the same table, the bottom figure, 9,521, should be changed to 9,479. Below it, for August '65, the figure should be written in of 10,731.

On the same page in Table (B), the column marked, Women's Misses' and Juniors', the figure 3,755, the last one, should be changed to 3,713. The figure should be written in below of 4,269.

In the last column, Men's, Women's, Misses' and Juniors', the figure 5,695, should be changed to 5,653, and the one below it to, 6,190.

[218] On page F, the first line, Men's and Boys', the dozens are to be changed to 48,272 in Table (A), the percentage to 18.2, the dollars to \$2,280,148, percentage, 12.9 percent. On the second line the dozens remain unchanged. The percentage is changed to 78.5 and the percentage of value is changed to 84.7. On the last line marked, Total, the dozens is changed to 265,016 and the total for dollars is changed to \$17,608,471.

A few more changes and we will be done. Table G, the next page. If you look at the figure for 1964 marked, 15th day, there is a figure of 2138. That was modified by Miss Beck in her testimony to 2160. You also have on the same line a figure for August given as 2405. It was changed to 2171. In the 1965 line, the May column, you have a figure of 2509. This is changed to 2404 and the August figure on the same line to 2344.

This completes the modifications, all brought but one, as the result of the revisions that were made in the data.

CHAIRMAN HORLACHER: Mr. Cooper has a question.

MR. COOPER: Mr. Chairman, in view of these arithmetic changes, which of course, are coming to us for the first time through no fault of Mr. Teper's, we made our own computations and everybody has had to work with a certain degree of haste here. But it just so happens that some of them do not jibe with what Mr. Teper has read and I think it may be helpful, if it's not an undue imposition on Miss Beck, if I indicated at this point where there may be some differences between Mr. Teper's figures and those that we have computed for shipments, since these all come from government figures, and ask her if, in effect, she could do the arithmetic before I cross-examine Mr. Teper.

\* \* \*

[224] THE WITNESS: \*\*\* But quite frequently they

will be dyed afterwards or they may be even shipped to the principals, to the affiliates in the States, in the greigish form, because they may want to dye it to [225] fit a specific shade, depending on the changes in the demand for the product. After the garments are dyed, then they are returned for finishing. The dry finishing may consist of brushing, let's say, of hairy type sweaters. Sometimes they used to do shearing or napping on it, but that is not important. But they do sorting of the garments. They sew on buttons. They trim loose threads. They inspect the garments for defects. If they find any defects they mend those. Then they press the garment and they package it. This is the finishing operation. So here you have a process of how the full-fashioned garment is made. I mean, I have not attempted to go into fine details, but just to give you an overall picture. The main thing is, it's a garment which starts with yarn and which emerges in the form of garment parts, which thereafter are joined and processed. In the case of cut-and-sewn sweaters, in effect, the knitting machine produces yarn goods some of which may be tubular in character and those are, after proper processing, are spread on cutting tables like any woven cloth, cut like any woven cloth, joined together, not necessarily by use of the same kinds of machines that are used in joining woven fabrics, but substantially similar. The garments are then inspected and trimmed. So that the basic difference is that whereas in the cut-and-sewn garment, you do have an intervening piece of yarn goods, of knitted cloth, in the full-fashioned operation, you do not. Now, this is a full-fashioned operation. I might say it is a relatively specialized operation. The over all figures for the Knit Outerwear Industry for the United States mainland do not fully reflect their operation, as they are only a small fraction of that total. Maybe [226] at one time it was estimated that around 12 percent of total production of sweaters was full-fashioned sweaters. That was quite a few years ago. This was the latest estimate and I

would not suggest that that figure is accurate today. But it merely suggests that there is a small fraction and not the major proportion of sweaters produced in the United States, or for that matter, any place else. The cut-and-sewn sweater is the more common one.

Now, the economic behavior of the full-fashioned industry may not necessarily be the same or follow the same pattern as the behavior of the overall sweater industry. This I will address myself to a little bit later on, and discuss it in a little bit more detail.

But before I do that I want to discuss another facet of an industrial organization of this industry. There are basically three types of firms in this industry. Some are manufacturers. Others are known as converters or jobbers and the third group is known as contractors or commissioned knitters. The manufacturer performs all the necessary operations in producing the sweater in his own establishment, with the possible exception of dyeing. As I understand it, large companies may have their own dye facilities. Small companies send goods to commissioned dyers and there are some 25 commissioned dyers in all of the United States who do that work for specific firms. That figure of 25 comes from one of the articles in the special periodical of the National Knitted Outerwear Manufacturers Association, the Knitted Outerwear Times. The manufacturers then produce knit products from yarn which they own or they may be doing dyeing and finishing also for their own account. Contractors or commissioned knitters or finishers are establishments that [227] knit fabric from yarns that are owned by somebody else, or they knit fabric blanks from yarns owned by others.

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[229] This is the only time we have been given such a breakdown and they account for only 13 percent, in [230] round numbers, of the dollar amount. Women's and misses' sweaters is the bulk of sweater production. So production of women's sweaters would be affected by

two sources, one, the fact that they are women's sweaters, and two, the fact that they are full-fashioned. Now, full-fashioned sweaters became very popular in the middle '50's, early '50's. In a few years thereafter there was substantial growth of sweater output that was produced on full-fashioned machines. In 1960 the National Knitted Outerwear Manufacturers Association in the Knitted Outerwear Times, published some estimates, because the government does not collect figures, which distinguished full-fashioned sweaters from all others, published some estimates of the quantities produced. In the year 1959 the quantity was slightly under 2,000,000 dozens for all of the United States. Let me underline that this 2,000,000 dozens would have included production in Puerto Rico because production of full-fashioned sweaters in Puerto Rico was to order of affiliates, the principals on the United States mainland. These figures would include what is produced over here for them. At that time the National Knitted Outerwear Times estimated that that production accounted for about 13 percent of sweater output. Thereafter they found that there was a change. There was no further upsurge of demand for full-fashioned sweaters and actually the article concluded, while discussing the machinery that is used in producing these goods, that the rate of activity of existing equipment declined. For a number of years there was a decline. However, in the last year approximately, or a little longer, full-fashioned goods became popular again, and I, who follow the trade publications fairly carefully, was really surprised to see that [231] now they even mention full-fashioned sweaters as potentially good sellers in the Women's Wear Daily. Just on Monday, November 8th, the day before yesterday, which suggests to you that I got this clipping in the mail last night, the story said, "Classics Still to Top Sweater Lines in Fall '66." The story begins, saying:

"Classic, conservative styling will continue to dominate fall, 1966 sweater lines, with cables and ribs the chief styling tools."

Then skipping further down, it says:

"The lines will fall into four basic categories: Full-fashioned, brushed, flat knits, and for some knitters, bulkies."

Then it goes on to say that lamb's wool will be important in full-fashioned. But for many years you didn't see any reference to full-fashioned sweaters in the trade press. This is one of the early ones. As I said, in this industry, not every sector necessarily shares equally in the prosperity. You may recall that in Exhibit 13, Mr. Cooper's exhibit on page 58, he had a citation from an article by Mr. Korzenik, which said:

"In finished knitted outerwear the greatest gains of all were probably scored in men's and boys' sweaters."

That's speaking of 1964. Mr. Cooper had to have economy of space so he did not reproduce the title of that article, which was:

"Not All Trade Sectors Shared in 1964 Expansion."

Then it began as follows, and this portion was not reproduced. I quote: "During the past year," that's '64, "the industry as a whole [232] experienced some expansion. Employment figures, to choose but one yardstick, rose somewhat after the decline of '63, signifying an overall improvement in activity. But since the industry produces a variety of products, ranging from knitted fabric to highly styled finished apparel directed to different markets and subject to different economic forces, it is essential to bear in mind the diversity of conditions that are contained in such generalizations and in all industry averages."

Then the article goes on to point out, for example, that swimwear, it appeared as though they may do very well, but the profits might have been down in swimwear. The rest of the quotation you will find in Mr. Cooper's exhibit. But the key proposition is, that we are dealing here with an industry that even in the sweater area consists of a number of different sectors. Those things are important.

I already said that goods produced here are typically

disposed, sent to the affiliated companies in the States and that some of them furnish raw material to their affiliates and those affiliates do not necessarily take a mark-up on the amount that they spend in purchasing the particular raw material. For example, the Dun & Bradstreet report on MKM Knitting Mills, Inc., that is the affiliated company to the Gordonshire group here, the report dated June 8, 1965, on its page five notes, and I quote:

"The company purchases finished goods from affiliates and subsidiaries. However, it purchases the yarn in many [233] cases and furnishes it to these affiliates and subsidiaries to be spun and made into garments, charging the raw materials to these concerns, and then is billed back for the cost of services, plus the cost of the raw material."

Now, this is the first time that a Dun & Bradstreet report on MKM had this remark contained in it. I have been a very faithful reader of financial reports on MKM and other companies that are operating in Puerto Rico. I am talking of the Stateside companies that have their affiliates in Puerto Rico. I cannot tell you that this is necessarily a change in practice of MKM in billing Gordonshire. But I suspect that it may be, because no such notice previously appeared. If my suspicion is correct, and I can only offer it to you as a hypothesis, this may explain at least in part why Gordonshire and its affiliates have switched from the profit column into a loss column, namely, they no longer take a mark-up, a natural, normal mark-up on the raw materials that they use, something that every business would do, typically in the garment industry. A lot of firms operate on that formula. They would add their anticipated labor cost to their expected material costs, add on a fixed percentage determined on the basis of their experiences on the needed mark-up, and that would determine the final selling price, approximately, of the particular product. But if you do not mark-up, stop marking up, the material part of the particular equation, your revenue may dec-

line and with the decline of revenue you may be shifted from a plus to a minus position.

MR. SCHWARTZ: What is that specific reference, Dr. Teper? Is that a Dun & Bradstreet report?

[234] THE WITNESS: I quoted from a Dun & Bradstreet report on MKM Knitting Mills dated June 8, 1965. It's page five. There may be some other factors which may account, let's say in the case of Gordonshire, because in the case of inter-company transactions, for the showing that we have seen for the fiscal year ending June 30, 1965. You know there are five Gordonshire companies here. For the fiscal year ending June 30, 1964 all five companies showed a loss. For the fiscal year ending June 30, 1965, two of the companies showed profits. That was Tinto and Tinto does dyeing work for Gordonshire and for Bonita and Finrico. Finrico finishes sweaters made by Gordonshire. In other words, what is income for Finrico and what is income for Tinto, is an expense for Gordonshire. If, for some inter-corporate purposes, the amounts paid to Tinto and to Finrico were increased, thus enabling them to show a fairly heavy gain compared with the losses of last year, this of necessity, will also increase the cost for Gordonshire and will increase their loss as shown on their books. Now, if the five companies of Gordon were operating as a single integrated company, or we had a consolidated profit and loss statement for the five of them, they would still show a loss for 1965. There is no question about that. But we would know then what is their actual volume, something we cannot determine in finished goods that they produce, something we cannot tell at the present time because of inter-company transactions. The situation, by the way, is no different than we find by way of Puritana. Puritana bought three companies, Alto, Insular and Superior, together with all the properties of their affiliates Statesides. In other words, they bought the companies lock, [235] stock and barrel, including these three. One of those three companies was a dyer that went under the name of, Insular.

Insular now is part of Puritana, an integral part, so we do not see the separate cost transactions. But when Insular became an integral part of Puritana complex we have a combined operation. In the Gordonshire group the two figures are separate. As a result of it we see an increase in profits on the part of two companies that do not even sell Stateside. They sell to Gordonshire and to Bonita, both of which showed losses in 1965. This, as I say, also throws some light on the reason for it.

It is interesting that when we add testimony by someone who was familiar with sweaters because he had day to day operations with it, and I have reference to the then General Manager of Gordonshire, Mr. McQueeney, who appeared before Review Committee No. 6-A in 1963, and he was asked this question on page 376 of the transcript, that if there were no increase:

"Are you prepared to say now that you are going to have a very good year?

"Answer: No, I wish I could."

Then the question on page 377:

"Question: If you hit the style right, you can get a relatively cheap item and make a real impact on the public?

"Answer: This year, unfortunately, that is not the type of garment that is moving."

Then again on page 366, Mr. McQueeney explains the nature of competition and I quote again from the transcript of Review Committee No. 6-A:

[236] "It is a peculiar thing in the style industry. Sometimes the hottest selling item, could have, just because of style, less labor content or less labor skill involved just because of the way it presents itself or it can be the other way around. You cannot make a generalization there because I have seen in one season the hottest selling item that we have something that practically falls off the machine, in the way of looking at it, and the next time it is something you have to work at very hard to get the effect you want. It is the style.

That is what the woman wants. She may want -- at one time, in 1957, they started to change to banlon because instead of having a lofty hand, they wanted to have a flat hand. Now they are going into all of these harsh shetland hands, or an angora hand. Sometimes they want to have a lot of trim and another time they want something that is simple and basic." Mr. McQueeney points out that costs could be very low on some style items simply because very little labor is required. Another time the situation may be totally reversed, again, because of the style situation. Obviously, if the company guesses wrongly on styles they intend to produce they may find themselves in trouble. This is another explanation for Gordonshire troubles back in '63, because MKM in 1963 lost some sales and did not make the money. MKM had to do a lot of reorganization, actually, I guess of the Hosiery Division not only in Puerto Rico, but also Stateside, because they missed the boat. They were making full-fashioned hosiery long after full-fashioned hosiery became a drag on the market and seamless [237] hosiery became the article in demand. They tried to stick it out. They could not. The market just was not there. It wasn't their fault. It was just wrong judgment. There are other things that may also account for some unprofitability of Gordonshire. Any business that has capital would use it normally to expand and to improve its equipment, to enter new ventures. A few years ago MKM had recorded on its books an obligation of an item described as, long term receivables from affiliated companies. That item first appeared as \$2,500,000. At the present time it appears as \$1,500,000. On the balance sheet of KMK it appears as \$1,500,000 currently owed as long term obligation to Gordonshire. This is an interest-free loan of many years standing. The interest rates in Puerto Rico are six to nine percent, as I understand it, on commercial loans. This company is depriving itself of income here because MKM, for good reasons, I am not condemning them for having that transaction, it goes to

the same parties in the end, this company has deprived itself of income of \$2,500,000; presently \$1,500,000, or deprived itself of opportunity to expand here, to invest, to do something else. This also will have a bearing on net profit shown.

I mentioned that the goods that they produce are sold by their principles in the States. We know at what price those goods are sold to the principles in the States, to the affiliated company, MKM. The blue book tells us that Gordonshire prices in the greige to MKM Knitting Mills are \$3.00 to \$4.00 each, and for finished sweaters, it's \$4.00 to \$5.00 each. I have obtained a catalogue of the selling agent, the wholly owned selling agent of Gordonshire, known as, Darlene. That's [238] one of their trademarks. I have tabulated the wholesale prices at which sweaters are offered to the retailers. And what do I find? I find that there were two styles that were sold under \$4.00; 14 styles sold at \$4.00 to \$5.00; 13 styles at \$5.00 to \$6.00; 13 styles at \$6.00 to \$7.00; 18 styles at \$7.00 to \$8.00; 18 styles at \$8.00 to \$9.00; 15 styles at \$9.00 to \$10.00 and six styles at \$10.00 and over. So that the goods for which Gordonshire gets \$4.00 to \$5.00, fall into this much higher range of marked up prices. In other words, the mark-up on raw material is taken by Gordonshire and Darlene, plus whatever other things, that they properly; and I don't begrudge them what they do. It's perfectly legitimate and perfectly legal. They take on additional mark-ups on the price that is paid over here. If any member of the committee would like to look at the catalogue, I have a copy of it here with me.

What is the sales record of MKM? By the way, MKM, as I said, was reorganized. They got rid of their hosiery business and they have drastically cut down on their Stateside affiliates. So that some of them that are still in business as a legal entity are actually inoperative. For example, the Manchester Dyeing and Finish-

ing Company used to be a dyer and is now a real estate holding company.

MKM Hosiery Mills does some sweater manufacturing in Massachusetts. But these things are about the only things they have left in the States, other than the company selling knitwear and Darlene Swimwear of California, which is a sales agent and design studio. The essential portion of their manufacturing operations is here.

Now, what is their business? In '63, the company is on a calendar [239] year basis, the financial reports quoted Mr. Gordon as estimating sales at around \$17 million. They were lower than the preceding year. In '63 the company lost money Stateside. The next year is the year ending January 2, 1965. The sales volume of MKM Knitting Mills went up by \$3,000,000 in round numbers.

Then on May 25th of this year, one of the financial reports quotes as follows:

"Barnet D. Gordon, President and Treasurer, on May 25, 1965, furnished a copy of the balance sheet of January 2, 1965. He said that business is now running at least in the vicinity of \$22,000,000. He said sales are running 22 percent to 23 percent ahead of the preceding year and that earnings are rising. The company has disposed of its hosiery division and is devoting its principal attention to sweaters and full-fashioned swim suits. He indicated the company is still using a \$1,500,000 loan from the Puerto Rican affiliate on a deferred basis, in addition to loans from officers on a long term basis, and said all trade bills are being retired on time. He said the company has a good volume of forward orders."

MR. YAGODA: The witness used, "one of the financial reports." Could you give the attribution more definitively?

THE WITNESS: Yes, I would be very glad to. This is the Dun & Bradstreet statement previously referred

to, a statement dated June 8, 1965, on the front page. I used Darlene because so much [240] attention has been centered on its losses over here. They are recovering. Business is booming. Why do I say that? I don't want you to take my word for it. On March 10, 1965, an article appeared in Women's Wear Daily and I would request permission to introduce it in evidence. I have copies of it for members of the committee.

CHAIRMAN HORLACHER: This article will be identified as Exhibit 20.

(Whereupon Exhibit No. 20 was marked for identification.)

MR. ALPER: What's the dateline?

THE WITNESS: March 10, 1965. On July 13, 1965 in the same paper, another article appeared, which I would also like to distribute to members of the committee.

CHAIRMAN HORLACHER: This will be identified as Exhibit 21.

(Whereupon Exhibit No. 21 was marked for identification.)

THE WITNESS: Let me quote the relevant portions. In the article of March 10, 1965, labeled, "U.S. Sweater Firms Geared For Big Season," there is in the third column, the bottom paragraph:

"Darlene Knitwear, Inc., is shooting for a 33 to 35 percent sales gain in 1965 over a record increase of 33-1/3 percent it had last year, compared with the previous year.

"The Manchester, N.H. - based company is increasing its production substantially in its plant there, and also its Puerto Rico factories. The Puerto Rico plants output will be stepped up to particularly produce 100 percent full-fashioned stretch pants and Ban-Lon stretch tops.

[241] "The company started knitting much earlier this year in order to start shipments on their way to stores in advance of last year's delivery time."

Then it goes on to describe some of the fashion trends.

Then the second story of July 13th, Exhibit 21, under the heading, "Peak Shapes As Sweaters Go For Broke," at the bottom of the second column:

"Darlene Knitwear, Inc., is receiving the biggest and earliest reorders in its history, a spokesman said. The company planned production and anticipated its needs, and is able to fill reorders, the spokesman added.

"Heavy commitments were made by Darlene on angora yarns, for example, which were expected to go up in price, and did, in fact, rise. The company expected big business on this yarn and had bodies knitted, later printing them in line with expected big demand for these styles."

Then he goes on to talk of fur blends. So then, presumably the company is expanding fairly substantially.

MR. COOPER: I'm sorry to interrupt and I'll try not to, but this is really a clarifying question with respect to the exhibits.

CHAIRMAN HORLACHER: All right.

MR. COOPER: I would like to ask Dr. Teper one or two questions with respect to the exhibits, purely to clarify what the purpose of their being introduced is. It is suggested that Darlene Knitwear is a Puerto Rican company or that MKM gets all of its sweaters for Darlene from Puerto Rico, is this what the exhibit is designed to show?

[242] THE WITNESS: The exhibit is designed to show precisely what it says, namely, that the volume of Darlene, which in effect, reflects the volume of MKM, is going up substantially. In answer to your other question, the Puerto Rican plants of this company are the major source of supply of sweaters.

MR. COOPER: Where does it say that?

THE WITNESS: I'm telling you that on my knowledge.

MR. COOPER: Does it say in this exhibit?

CHAIRMAN HORLACHER: No, he said he says that.

MR. COOPER: In your Exhibit No. 20 where you particularly quoted the fourth column: "The Puerto

Rico plants output will be stepped up to particularly produce 100 percent full-fashioned stretch pants and Ban-Lon stretch tops." Are full-fashioned stretch pants in this industry?

THE WITNESS: No, but stretch tops are.

MR. COOPER: Was the Dun & Bradstreet report introduced in evidence?

THE WITNESS: No.

MR. COOPER: Are you going to introduce it in evidence?

THE WITNESS: No. I would be glad to let you examine it.

MR. COOPER: May I?

THE WITNESS: Yes.

MR. COOPER: Thank you. I'm sorry for the interruption.

MR. VILLARONGA: You mentioned that Darlene had some Puerto Rican companies?

THE WITNESS: Darlene is the selling company for MKM. MKM is in turn affiliated with all the Gordonshire companies here. They have the same presidents and they have the same officers. They have all sorts of [243] interlocking relationships, the details of which I don't need to go into here. But whatever Gordonshire mills are producing here is disposed exclusively to MKM and is sold exclusively through Darlene. If you note, on all financial statements, all the sales are recorded as sales to affiliated companies. There are no sales in the free market. Once upon a time there was such a report.

MR. VILLARONGA: Does the blue book show that?

THE WITNESS: The blue book shows that Darlene and MKM are affiliated companies. That's on pages marked "C" in the blue book where you have information on individual firms.

MR. ATKIND: Page C-6. Mr. Chairman, if I may?

CHAIRMAN HORLACHER: Yes.

MR. ATKIND: With regard to this article in the Women's Wear Daily dated July 13th --

CHAIRMAN HORLACHER: Exhibit number?

MR. ATKIND: 21. It states in the early part of the article:

"The total look in sportswear, with sweaters playing a leading role, is registering with 'total impact' on consumers."

"The total look in sportswear," would you describe what that would consist of?

THE WITNESS: Frequently it refers to coordinates, the attempt to match sweaters with possibly, skirts, or possibly leotards, slacks, and so on, maybe a jacket, even.

MR. ATKIND: I see. So these other items then, would not necessarily be in the same classification for the industry we are discussing now?

THE WITNESS: Not necessarily. That is why I only read the sections [244] that dealt with Darlene.

MR. ATKIND: If Darlene is then selling the total look, it does not necessarily mean, does it, that all this business, this great success, is being enjoyed on sweaters?

THE WITNESS: Granted. But the two go hand-in-hand because they are sold as ensembles. So it will reflect itself in possibly higher percentage increase in the overall volume than if you only had sweater figures. But, unfortunately, I don't have such a breakdown.

MR. TITELMAN: Mr. Teper, you stated, reading from an article, that Darlene has prices including two garments that sell for less than \$4.00, and then a series of step-ups. Do you know where they are manufactured? Are they made here in Puerto Rico?

THE WITNESS: No, I can't tell you where they are made because it's not identified. But I notice that the blue book says; let me just make sure that I'm quoting correctly. Page C-8, Exhibit 6, says:

"There are 150 styles of sweaters produced."

The particular catalogue that I have, has but 99 styles listed. So I assume there is a fair degree of overlapping.

MR. TITELMAN: You are assuming that?

THE WITNESS: Yes.

MR. TITELMAN: I see. Do you know if they made money on this product or lost money on it?

THE WITNESS: I know that in 1964, Darlene made a profit, whereas, in '63 they had a loss. The profit was not very large. But they expect to make more money in '65. I said, Darlene. I should have said, MKM, because Darlene is the sales agent.

[245] MR. TITELMAN: And so far as quoting a garment at a rate that sells for less than \$4.00, I think we cannot put our finger on that and say they made money or lost money, so therefore, it should not have any significance?

THE WITNESS: No, not at all, sir. The reason those things are listed in the catalogue at \$3.00 is because of the relatively cheap material that is used in their making and low labor requirements. They are made for a market. They are made for a high wage market or a very low wage market. It does not mean that they are loss leaders, just regular merchandise.

MR. TITELMAN: Either way, it is possible that they may have made a profit out of it?

THE WITNESS: Sure.

MR. TITELMAN: Did I understand you also to say that as far as you understand it, MKM is not doing any manufacturing, or doing very little manufacturing in the States?

THE WITNESS: I said that they have discontinued a considerable number of operations. They have the following subsidiaries: MKM Hosiery Mills, which manufactures sweaters and shirts; that Darlene Swimwear of California is a sales agent and design studio. They have a New Hampshire finishing corporation that has been inactive. They have Darlene Knitwear, sales agent. They have Darlene Hosiery Mills of Manchester, New Hampshire, that is inactive. There is a Columbian Purchasing Group which manufactures knitted skirts. There is Edinburgh Knitting Mills of Manchester. That

is the selling organization, and Laurens Hosiery Mills, inactive. So that you have here two manufacturing companies out of a total of nine [246] listed for MKM that do manufacturing. MKM itself does dyeing, finishing and wholesaling of swim suits.

MR. TITELMAN: Isn't it a fact then that in Exhibit 20 the statement is made there that MKM is stepping up their production?

THE WITNESS: I think that's what I read.

MR. TITELMAN: In Manchester?

THE WITNESS: No. It says, "The Manchester, N.H. - based company." Please note that it quotes Darlene Knitwear, which is not the manufacturer at all, which is the sales agent. I would say that insofar as the Gordonshire group in Puerto Rico is concerned, they are a Manchester, New Hampshire, based company. There is no question in my mind about it. That is where Mr. Gordon resides.

MR. TITELMAN: Pardon me, Mr. Teper, but if I may read from Exhibit 20, "The Manchester, N. H. - based company is increasing its production substantially in its plant there \*\*\*".

THE WITNESS: Go ahead.

MR. TITELMAN: "and also in its Puerto Rico factories."

THE WITNESS: "Puerto Rico factories," plural. One plant versus several.

MR. TITELMAN: All right.

CHAIRMAN HORLACHER: Let's confine the questions to clarifying ones, if you will, and reserve the others until the examination period.

THE WITNESS: I won't burden the committee with other clippings which show progress made by this company. But the thing I want to point out is that there are many factors that may account for profitability and loss, and they are perfectly legitimate business reasons, perfectly [247] legitimate errors that sometimes lead to loss, and there is also the issue of conscious decision when you deal with administered price. You are

going to take profits. There is nothing, for example, shown us here in the presentation on behalf of the employer group as to what happened in the two companies of the Gordonshire group in Puerto Rico, Tinto and Finrico, after a loss. I recall the statements made last year about those two companies. I can't quote them verbatim, so I won't. But I recall the emotionism with which those losses were being discussed. We find that they are in the black, and heavily in the black, and yet, no changes were indicated which would have brought that factor about. I pray that this is a conscious decision of take profits in the tax exempt company.

MR. COOPER: I'm sorry to interrupt. I didn't hear that last statement. Did you state that as a fact or a supposition that they take profits in the tax exempt company?

THE WITNESS: I'll have to have the reporter read it back.

CHAIRMAN HORLACHER: Will you please read it back?

(Whereupon the reporter read as follows: "I pray that this is a conscious decision of take profits in the tax exempt company.")

CHAIRMAN HORLACHER: Let's take a recess.

(Recess taken.)

CHAIRMAN HORLACHER: The committee will resume.

MR. COOPER: Mr. Chairman, may I make a very brief statement on the record relevant to the guidelines submitted to this committee with respect to the admissibility of financial evidence, with respect to something which occurred to me during the recess, which I think important [248] to get into the record?

\* \* \*

[253] MR. ATKIND: \*\*\* Are you aware of the fact that it was doing exactly the [254] same function for several years before it was taken over by Martin Fabrics?

THE WITNESS: Yes. I said, as far as I know, there

was another company under a different name. It had a tax exemption under a different name. But that particular company produced knitted circular cloth of some sort. It may have been flat cloth. I'm not sure, because I was not interested in it.

MR. ATKIND: Excuse me --

THE WITNESS: I'm giving you what I know.

MR. ATKIND: May I suggest that in view of the fact that I can give you some very accurate facts about it --

CHAIRMAN HORLACHER: You are not permitted to though.

MR. COOPER: I would like to ask one clarifying question about that. Is that company classified in this industry, or not?

THE WITNESS: I said I did not find this company in the book, but my investigation of this company since I arrived in Puerto Rico last Thursday, revealed that this particular company had a number, 20-odd hand knit machines, probably larger, I don't have the exact number, hand knit machines, which do hand knit fashioned collars which are put on Rosita's knit shirts. I said that that kind of an article is not an article of commerce. It has to be made specifically to fit a particular kind of a sweater produced by a particular firm, out of particular yarn, to particular specifications. So, in my judgment, knowing this industry, this operation, all of it or part of it, if there are any other operations, is, and should be, classified in this industry. It is not listed in the blue book. Furthermore, since I came here I found out that the Office of Industrial Tax Exemption published a schedule of public hearings to be [255] held from October 29th to November 23, 1965, and that it scheduled a hearing numbered SL-662, for Southwood Knitting Mills, Inc., its product being described as sweaters. I did not have a chance to go there in person because of pressure of time. But one of my representatives did go to the tax exemption office and got the following information: The name of the new company is Southwood Knitting Mills,

Inc. Its address is 207.1, State Road No. 2, San German, Puerto Rico. They propose to make cut-and-sewn children's sweaters. Their Stateside connection or mainland parent or associated concern is Grey-Wood Knitwear Industries, Inc. They presumably started operations on September 1, 1965. This is a fact I could not verify, whether they just started or whether they only intended to start on that date. They plan to invest about \$30,000 or \$35,000 in machinery and equipment, including installation cost and plan to employ about 30 production employees, with a payroll of minimum wages, it says. I don't know why it says, parenthesis, "(minimum wages)," and about two supervisory personnel with a payroll of about \$12,500 per year. Grey-Wood, by the way, has several operations here. They were represented at this hearing. The names of those companies are Northridge Knitting Mills, Weststone Knitting Mills and Midland Knitting Mills.

There is another company which has just received tax exemption. Very frankly, I cannot tell to this committee, that this company is necessarily in this industry, although on the face of tax exemption, it would appear to be such. This is the so-called, Sea Breeze Knitwear Corporation, Case No. SL-478, which was granted a tax exemption by the Government of Puerto Rico and presumably began operations.

\* \* \*

[262] THE WITNESS: \*\*\* I will start my discussion by referring you to Page D. As you know, quantity figures and value figures have been revised. This was a very unusual experience, because in something like six years or thereabouts, of collection of these data, there were only two revisions, one on the annual figure and one in one monthly figure. That has happened back in 1960 and 1958. From 1960 to 1964 we had no revision of figures. We had none until after this hearing was announced and then we seemed to have gotten them in profusion because there were at least three sets of revisions, with the same figure being revised -- some fig-

ures being revised for the third time. There is a very interesting thing, that while dollar volume figures were revised, the revisions were infinitesimal. They did not budge the level of the dollar volume very much. Sometimes they went down a little bit, sometimes they went up a little bit, but essentially, the level was kept. When we looked at shipping weights, they remained substantially the same. They were not budged very much in either direction. But for some reasons, the quantities reported were drastically reduced. You know that these figures come from a document called, Shipper's Export Declaration. When goods are shipped outside of Puerto Rico, whether to a foreign country, or the United States, a shipper's export declaration must be filled out. Shipping weight has to be indicated and that would conform to the weights, either for plane or boat transportation. It's one of the factors on which rates are determined. So I suspect that this would be a fairly accurate figure. I suspect also that the value figure is going to be pretty accurate, because should any package be lost, any insurance adjuster would want to see how various records correspond. So the dollar volume figure would probably correspond. [263] Furthermore, it's an easily determinable figure. It's a figure which is very readily available in every business. When it comes to quantities, apparently the figures are not as well kept. I am not suggesting any wrongdoing either. I want to underline that. It's just that this figure is sloppily kept. Apparently, as I found out here in a number of cases, the firms do not even fill those manifests out. They are filled out by forwarding companies. A forwarding company has a package and they put what they think is in it. They know the product. They know its value. They know its weight. As to quantity, I suggest there are a number of guesses taken. Anyway, this multiplicity of revision certainly has shaken my faith in the quantities we quoted here. That is one of the reasons, the reason, why I did not compute ratios between United States

production, including Puerto Rico, and Puerto Rican shipments.

MR. COOPER: May I ask one question?

THE WITNESS: Juset let me finish. As I said, this is one of the reasons I have not computed, and in a sense, I'm glad, because since I got here I have had to sit at night and revise all the tables that I previously computed. So there are a couple of figures less that I had to play with.

MR. COOPER: May I just ask whether the import of Dr. Teper's present testimony is that there is a suggestion that there may be inaccuracy in what the Bureau of Customs has now reported as the correct shipping figures?

THE WITNESS: No. The inaccuracy is contained in a document called, Shipper's Export Declaration.

[264] CHAIRMAN HORLACHER: You mean the latest revision?

MR. COOPER: Or in the alternative, is he suggesting that there are inaccuracies in figures reported by individual companies to the United States Government, or figures which have been changed in some fashion?

THE WITNESS: I think my statement speaks for itself. I said that I have lost faith in quantity figures, because of multiplicity of revision, because dollar volumes have not been changed substantially and shipping weights are not changed substantially. This particular shipping document is a confidential document. It says so on the face of it, so I am not in a position to re-check it. It's filled out either by the firms or by their forwarders. So in a number of cases the firm is not the one that fills it out. But I pray here that value data and shipping weight data are more accurate than quantity data. So I have not kept quantity data out of my presentation. I have it here, and what does it show? If you look at Page D, it shows that we did have a four percent increase in quantity figures for the year ending '65 as compared with the year ending '64.

CHAIRMAN HORLACHER: Table (A) you are referring to?

THE WITNESS: Page D, Table (A), shipments of sweaters from Puerto Rico, quantities, an increase from 398,000 to 413,000, still less than the preceding two years, 1962 and 1963, in August.

CHAIRMAN HORLACHER: Off the record.

(Discussion off the record.)

CHAIRMAN HORLACHER: Back on the record. Off the record, the point has been made that the figure about which the witness is presently [265] testifying, or using in his present testimony, is one about which a question has been raised, which question has not been finally clarified.

\* \* \*

[266] THE WITNESS: I have checked the shipping weights for the years ended August 31, 1963, 1964 and 1965, and for the first eight months in 1963, 1964 and 1965. I did that the night before last in my hotel room and therefore, I have to apologize for the form in which I am going to give it to you.

CHAIRMAN HORLACHER: This tabulation will be identified as Exhibit 22.

(Whereupon Exhibit No. 22 was marked for identification.)

THE WITNESS: We see from these data, just comparing crudely, '63 with '65, 1964 was lower in both instances, '63 to '65, the year ending August 31, shows a rise of about nine percent in shipping weight. The first eight months shows a rise of about 20 percent between the same periods of time. The value increased by more, but certainly we do not have a decline in units. Of course, it can be argued that the goods are heavier in character, that you are producing more bulkies, that you are producing heavier sweaters, or you are producing them out of more expensive material. On the issue of more expensive material, I have taken the trouble and have gone over the import data, shipments into Puerto Rico of yarn and of knitted fabrics, to see whether they reflected any particular upward price increase. I could not find it. Now, I have to say that

those imports of yarn and of knit fabrics are not necessarily addressed to this industry. I cannot separate them. But if the goods sent to this industry were of higher price, unquestionably they would have affected the averages derived from these import figures. I cannot account for it.

CHAIRMAN HORLACHER: Percentage increases, you said, are '65 over '64 in both cases?

\* \* \*

[268] THE WITNESS: \*\*\* [269] This is a period when there were no substantial crises in wool yarns and we had substantial [270] price decline on synthetic yarns.

Now, what about employment? Do turn to Page G. I just want to draw your attention to it. It's the same data that is contained in the blue book, just arranged differently. You see that you have information for a number of months, the months of February, the months of May, the months of August and the months of November, for a number of years. Now, it's true that at certain times in Puerto Rico in those months, employment was higher than at the present time. The question is, why? Is this decline due to the impact of minimum wages, or not? Certainly the succeeding committees that met did not find that the prior increases did have a negative effect. But more than that, one can compute, as I indicated, average employment on the basis of averages for February, May and July from these figures, and for February, May, July and November for some years. We can see that the average for three dates and the average for four dates seems to run pretty close together. Now, what does that permit us to do? It permits us to compare the shipments out of Puerto Rico with the manpower that is used to produce them, bearing one thing in mind that is very important. The further you go into history, the less mix do you have between sweaters and knit shirts and swimwear. In other words, those produced at that time are not produced in the same quantities. At the present time, in addition to

sweaters, we are producing knit shirts and we are producing swimwear here.

Now, I have taken three dates just for comparison, January - August, '59, an eight months period, which corresponds to February, May and July dates, you see, for employment, for '59, '63 and '65. What do we find? Average employment in '59 was 2423 and the output was 246,500 dozen sweaters, [271] or on the average, 102 dozen, roughly, per person.

MR. TITELMAN: Where are you reading this?

THE WITNESS: I'm reading from my notes. Let me use a device.

(At the blackboard)

CHAIRMAN HORLACHER: Is that in the exhibit?

THE WITNESS: I said I am taking data for January - August, eight months. I am going to make it correspond to average information for employment in February, May and July. I said I have done the computation for three periods, 1959; 1963 and 1965. Our employment was 2423, 2305 and 2314. The dollar volume that was produced, and I am going to put it in rounded numbers, although you have the detailed figures in the exhibit, in the same periods, were 9.2 million, 11.1 million and 17.6 million. If you divide employment into the total shipments you get the value of shipments per worker, of \$3785 for the first eight months of '59, \$4823 in '63 and \$7610 in 1965, a very substantial increase in dollar volume of output per worker.

If we take quantity figures, which I distrust, as I indicated, here is what we find. Again, I am going to abbreviate them. In the first eight months of '59 shipments were \$246,000.

CHAIRMAN HORLACHER: 246,000; what?

THE WITNESS: Thousand dozens. 246,000 dozens. In '63, 264,000 dozens and 265,000 dozens in '65. Now, the output per person becomes 101.8 in '59, 144 in '63 and 114.5 in '65.

MR. COOPER: Is this the first eight months of '63?

CHAIRMAN HORLACHER: It's January to August, using three months to derive the average.

[272] THE WITNESS: You talking of which figure?

MR. COOPER: I am talking of volume.

THE WITNESS: I don't know what you mean. Dollar volume?

MR. COOPER: Sales volume.

THE WITNESS: 11.1 million.

MR. COOPER: Excuse me. I meant quantity of sales.

THE WITNESS: 264,000 in round numbers, although I have done the calculations on exact numbers, 263,000.

MR. COOPER: Excuse me. You are talking about '63, not '64. Okay, I'm sorry. I was looking at the '64 figure.

THE WITNESS: What this suggests is this: If you had a substantial increase in output per worker between '59, when we had employment of 2400, and '63 and '65, when we have approximately the same level of employment, that we had a very substantial increase in dollars per worker, as I said, 14 percent in physical output per worker. Now, the worker figures here include workers that are employed on swimwear and employed on knit shirts. The output figures on shipments are only sweater figures, so these figures understate the rise in output, in productivity, because we could isolate workers employed solely on sweaters. These numbers of employees would be lower in all three cases. We are faced with a situation where the productivity in this industry has gone up and some psychological displacement of labor has taken place. Please note I fully agree here with Mr. Cooper, there is no claim made that the productivity of workers in Puerto Rico in this industry was lower than Stateside. For that matter, prior testimony by Mr. Unterberger some years back was to the effect that the equipment [273] here is more modern on the average, than in the United States, and productivity is high.

\* \* \*

[277] THE WITNESS: No, it's higher. In August of this year they [278] had 170 employees. In May they had 147. In February that had 130.

What is the impact of the proposal that we are making? It is my contention, on the basis of consideration of this industry's growth, on the basis of knowledge and experience, that this industry can readily afford to meet the \$1.25 minimum wage, ignoring for the moment the impact table which suggests an increase of 4.2 percent, and assuming that the same cents per hour differential would be maintained between the average wage now existing, \$1.27, and new minimum, namely, if the minimum wage rate were to go up to \$1.35, although in some instances before the spread was narrower than that. Assuming that to be the maximum impact, we will still find that there will be a 50-cent differential as against the average wage in the Knitted Outerwear Industry in the States, where the average wage in knitted outerwear was \$1.85. In this the extent of the differential between the States and Puerto Rico? By no means. Because in the States on the \$1.85 they have to pay social security, unemployment insurance and workmen's compensation, as against the same or similar percentages that have to be paid here on \$1.35. I am not dealing with current differentials, I am dealing with potential differentials. It is our estimate that these government required fringe benefits including temporary disability that we have in New York State and some other States, it would raise between 15 and 16.5 cents per hour Stateside and somewhat less than a dime in Puerto Rico. So you have another nickel to take account of a possible wage differential between the two areas. Then you have the various fringes that exist in the States, which for all practical purposes, with the exception of Coamo, do not exist here. There are some fringe [279] benefits here. They amount to very little. I did not do the actual computation but I have examined a number of certified financial statements which showed some fringe benefits. Whenever I tested them, they are

very, very small in relation to covered payrolls. Let's assume that they amount to three percent of the wage bill. Again, we will have 50 to 25 cents an hour in fringe benefits, not governmentally required, Stateside. They are a nickel here, per hour of labor. So we have another dime to play with. We have 50 cents difference in wages, governmentally required fringes, and around a dime in voluntary fringe benefits, or a differential of 65 cents. Of course, in a number of cases it may be even higher. But let's deal with this. Now, what is the significance of that figure after the increase? When Mr. McQueeney testified before this committee in '63 he was asked the question about productivity in his plant and a continental shop. His answer given on page 380 of that transcript was very enlightening. He said, and I quote:

"As far as the modern machinery is concerned, I feel that our machinery is as up-to-date as any machinery that is in the industry."

This conforms to what was testified on behalf of the industry as a whole, previously. Mr. Cooper also underlined that this was true for years and years and that the industry never contended that the labor productivity in Puerto Rico was any lower than Stateside.

Now, question? If output per man-hour is identical in Puerto Rico and in the States, then the differences in hours of work, including fringe benefits will reflect the differences in labor unit costs in [280] production of identical goods. So that you can take average hourly earnings, add fringe costs to them and they will reflect the relationship of unit labor cost on the average in the United States with those of Puerto Rico. They would suggest that there is this extensive differential which is still available after you reach the peak maximum rate permissible under the law. Oh, yes, one can say that the average hourly earnings in the States are gross average hourly earnings, whereas, the earnings of \$1.35 that I am referring to are straight-time average hourly earnings. But if you examine the available data on the extent of overtime in this and other apparel industries,

and the Department of Labor periodically publishes this information, it averages about one hour a week. So there would be an allowance of say, two or three cents, from the Stateside wage to take out the effect, the impact of time and a half for overtime. But we have such a wide range that one can readily grant a nickel and be liberal, or even a dime. You can see it would certainly cover differences due to overtime or whatever else may affect the general average. But there are other things that may affect doing business here. What can they be? Well, there is no question that if your goods have to be brought to Puerto Rico, they have to be taken back. There is a transportation charge. To the extent that the transportation to and from Puerto Rico is met by the companies in Puerto Rico, that extra charge will affect the competitive situation here. To the extent that is met by companies in the States, that factor is already taken into account when prices are determined, which are paid to the Puerto Rican affiliates. What are the freight costs? I have examined the [281] financial statements contained in Exhibit 13 and laboriously computed the approximation of covered labor cost and freight. I have done that by company groups or by companies.

CHAIRMAN HORLACHER: This tabulation will be identified as Exhibit 23.

(Whereupon Exhibit No. 23 was marked for identification.)

THE WITNESS: These are data which have been derived from certified financial statements contained in Exhibit 13 and the periods covered by them I indicated. I may add that these results are not much different. They are substantially within the same range of cents per hour in terms of cost of freight as prior computations that I made in '63, '62 and '64. They are consistent and although a new set of data are used in their compilation, you can see that the freight costs typically are not high. In the case of the Gordonshire group they run 11 cents per hour. They run less in the case of other companies or company groups because conceiv-

ably, freight is paid in part by the Stateside concern. Textile Dye Works have 11 cents and a fraction freight costs. But be as it may, even if you take highest of these averages, 11 cents, and assume that no Stateside company has any corresponding freight cost charges when they operate on the mainland of the United States, and admittedly, not an accurate supposition, although it will be true for some of them, we find that if we allow everything we still are left with a margin. We started with a 50-cent margin of which I gave away five cents. Take account of overtime. I have 15 cents for fringe benefits, bringing it to about 60 cents differential. If we subtract a dime for freight cost differential, we are still left with [282] a differential in favor of Puerto Rico of 50 cents an hour.

Now, what other factors are there that may affect profitability in Puerto Rico?

MR. ATKIND: On the subject of freight, you made a point that you are not aware of what extent the freight may be borne by the Stateside affiliate in these shipments.

THE WITNESS: No, I did not say that.

MR. ATKIND: You recognize that there is that possibility, that is, that the Puerto Rican company is not paying the freight, that Stateside might be doing so?

THE WITNESS: I made it more specific. I said that the reason freight costs are lower in some cases is because the Stateside affiliate bears the cost of freight.

MR. ATKIND: That freight factor then, would not be included in this chart, very obviously?

THE WITNESS: No, sir. It should not be included because we are dealing with the costs to Puerto Rican companies. We are dealing with the costs of the effect of their doing business here. I am offsetting it against the wage differential paid here, versus over there.

MR. ATKIND: On that same reasoning, if a Stateside affiliate would be paying the cost of the freight, it is not illogical to assume that might be negotiated in the price that's paid when they buy the goods, so there-

fore, there could be a lower price paid in consideration?

THE WITNESS: Absolutely. That's the point that I made.

\* \* \*

[286] THE WITNESS: Gentlemen, I have substantially completed with my presentation. I just want to draw your attention, that we are dealing with a labor law, that we have no evidence whatsoever from the manufacturers' point of view to show that there was a lower productivity of workers here. They could not tell us what kinds of factors accounted for the rise in prices of 90-odd percent in the first eight months, except to offer speculations, to which otherwise they objected, when made by other parties. But they who have records, who have access to data, who have access to every single internal bit of evidence, they could not enlighten this committee and provide it with facts. They chose not to present, for whatever reason they may have had, bona fide reason.

There is a very old case, a case which dates back to the days of Justice Marshall, on this point. It's the case of *Taylor v. Riggs*, 26 U.S. 590 at p. 595. Chief Justice Marshall held:

"The rule of law is, that the best evidence must be given of which the nature of the thing is capable; that is, that no evidence shall be received, which presupposes greater evidence behind, in the party's possession or power. The withholding of that better evidence, raises a presumption, that, if produced, it might not operate in his favor."

I do not contend that Mr. Cooper has withheld anything. I do contend that Mr. Cooper failed to go to his clients and seek the very kind of information that he could have presented to this committee.

MR. COOPER: One question of clarification on that. Is the suggestion that this record does not contain financial statements, [287] not only for the four years preceding 1965, but the most recent financial data for partial years available to all the companies a party to this proceeding?

THE WITNESS: The answer is, No, it does not contain such complete information. It contains information with schedules held out, with pages missing, with references to schedules time and time again referred to on statements which are not there, which is evidence of withholding. I am not suggesting that you have withheld it.

MR. COOPER: Thank you.

CHAIRMAN HORLACHER: Let's take a recess.

(Recess taken.)

[288] CHAIRMAN HORLACHER: Before proceeding with the examination of the witness, perhaps it would be in order if you would offer these exhibits, Mr. Teper.

THE WITNESS: Will you give me the numbers, please?

CHAIRMAN HORLACHER: They are 20 through 23.

THE WITNESS: They are so offered.

CHAIRMAN HORLACHER: They have been offered.

Unless the Chair hears an objection, they will be received.

(No response)

CHAIRMAN HORLACHER: They are received.

(Whereupon Exhibits Nos. 20, 21, 22 and 23 were received in evidence.)

CHAIRMAN HORLACHER: On the question of the correct figure for the shipments of sweaters from Puerto Rico to the United States for the year ending August 31, 1965, Table A, Page D of Exhibit 12, the computation made by the Committee's economist, Miss Beck, indicates that figure should be --

MISS BECK: 381.

CHAIRMAN HORLACHER: -- 381.

MISS BECK: In dozens.

CHAIRMAN HORLACHER: Zero, zero, zero?

MISS BECK: This is in dozens.

CHAIRMAN HORLACHER: 381,000 which is rounded.

THE WITNESS: I want to thank the committee economist for correcting the typographical error that I made.

CHAIRMAN HORLACHER: Mr. Blum?

\* \* \*

## [291] EXAMINATION BY MR. BLUM

\* \* \*

Q. Are you suggesting as an economic matter that it is not a [292] cost of doing business in Puerto Rico? A. This 0.2 of a cent is a cost of doing business in Puerto Rico, or 10.6 cents.

Q. Well, are you suggesting that Northridge -- are you suggesting that because the stateside company pays portions of this freight cost, that it is not an economic cost for companies doing business in Puerto Rico? A. Well, you see, it is a cost for the stateside company. Assume that that stateside company pays a dime which otherwise might have been paid by Puerto Rico. They take that dime off the price they will pay Puerto Rico for the services Puerto Rico will perform for them. So instead of paying them, for argument's sake, \$5.00 for an article, they will pay them \$4.90. Now, the cost to the Puerto Rican company is what appears in their profit and loss statement and various schedules thereto representing their expenditures in doing business. Their income is \$4.90.

CHAIRMAN HORLACHER: Do you agree it is an economic cost to be borne by the combination of the stateside and the affiliated Puerto Rican company? It just makes a difference in the way the accounting is done, right?

THE WITNESS: Well, if we had a consolidated statement for the company, then that freight cost would be a charge on the over-all entity, all the companies that make up the combined group.

BY MR. BLUM:

Q. On the matter of prices paid to affiliated companies by stateside companies, you suggest that they might pay lower prices than an arm's length relationship would call for, for a number of reasons, [293] and you suggested several tax reasons. Would there not be certain tax benefits to allowing the Puerto Rican affiliated companies to have greater income and thereby ac-

cumulate money here? A. Well, first, in answer to your question, let me address myself to the fact that I am going to deal with the issue of lesser price than an arm's length transaction would permit. In other words, the arm's length transaction presupposes a ceiling beyond which a price cannot be paid by a stateside company to its Puerto Rican affiliate. It deals with the top; there is nothing about the bottom up, that is, how much less. Now, if a company is tax exempt in Puerto Rico, and a number of them are, they may prefer to accumulate money here. If they transfer this money to the States and pay it out as dividends to the stockholders in the States, that money becomes taxable. It is only so long as it remains in Puerto Rico or is sent abroad outside of Puerto Rico that it is free of U.S. taxation.

Now, if a company is taxed both in Puerto Rico and in the States and it needs to get money stateside, then it is an economic fact -- which can readily be demonstrated by a small computation -- that it pays to get the money to stateside without having to have double taxation, both in Puerto Rico and in the States.

Now, I am not dealing with any violations of statutes; I am not dealing with tax evasion. I am dealing with tax avoidance. I am not a lawyer, and I will let the lawyers discuss at what point tax avoidance is proper and at what point it isn't. I am an economist.

Q. Generally speaking, on the face of it, would it not be advantageous for a company which is tax exempt here to have a higher [294] profit here and to retain profits here rather than to have higher profits on the mainland?

A. Not necessarily, because if, for argument's sake, the company feels that they have reached their maximum potential of expansion for the market, for goods, they may prefer to utilize it for some other undertaking stateside or somewhere else. It is only if the company wants to continue to expand in Puerto Rico beyond a given size that it may pay. But there is no uniform justification. One would have to examine the facts of a specific case.

CHAIRMAN HORLACHER: Well, you are saying that it might be an advantage in terms of capital location, but the question is in terms of tax saving.

THE WITNESS: But the issue is this. But the tax saving -- if you dealt with the pure abstraction, in other words, it doesn't make any difference to me where I have my money, then obviously it pays to hold it here.

CHAIRMAN HORLACHER: That seems to be the question.

MR. COOPER: I think I can save some time on this, if I may, because I have got the regulation, and we have just perused the regulation again, and there is nothing in the regulation which says it must be arm's length if it goes up but not if it goes down.

CHAIRMAN HORLACHER: This, I take it, is an interpretation.

MR. COOPER: It is his interpretation.

CHAIRMAN HORLACHER: I haven't been assuming -- for the obvious reason that the Treasury would be interested, logically, when it gets too high, but, logically, the Treasury wouldn't be interested in the low [295] side -- that this is an interpretation. Maybe it is a logical interpretation.

MR. COOPER: But -- Well, let it go.

THE WITNESS: Let me say the interpretation we have had from the sidelines is also erroneous.

MR. COOPER: I will read it into the record.

Well, never mind. Forget it.

MR. BLUM: One more question, Mr. Chairman.

BY MR. BLUM:

Q. On the Gordonshire companies, you have provided us with press releases which refer to business prospects of the affiliated companies. What are you suggesting? Are you suggesting that this bodes something definite with respect to Gordonshire's present picture? What is the implication of that? A. First, the things that I have provided were two news stories, and I also read a quotation from a Dun and Bradstreet report and quoted Mr. Gordon himself. Mr. Gordon himself indi-

cated that he expects a volume -- that the current volume, 1965 -- midyear, was running at the rate of \$22 million, as against \$20 million that he presumably has done a year ago. Now, currently the MKM hosiery operation has been disbanded. It still existed a year ago. So that an increase from \$20 million to \$22 million in volume suggests a substantial improvement in the volume on sweaters. His main source of supply for sweaters that he distributes through MKM and Darlene is Puerto Rico, even though he does have some affiliates in the States. Therefore, I expect that the volume here will go up. And I am advised that one of the news stories quoted a spokesman for Darlene saying that they plan to expand in Puerto Rico.

\* \* \*

[302] MR. COOPER: \*\*\* Before I cross-examine Mr. Teper I would like to introduce one other exhibit, because it may have some relevance to the cross-examination. There have been so many hypotheses, suspicions and prayers, and so on, [303] without any suggestion of wrongdoing on the part of any of the parties, that I would like to clear them up when it is possible to do so.

Mr. Teper did make reference to a Custom's form, Shipper's Export Declaration, with value, net quantity in units, and weight shown, and he cast some doubt on the correctness of the quantity figures shown. Because of that doubt, I want to introduce as an exhibit a copy of the Shipper's Export Declaration, together with a letter addressed to Mr. Kelberg dated July 30, 1965 by the Controller of the Northridge Knitting Mills. And the purpose for doing this, Mr. Chairman, is to indicate that the very last item on this form says -- and I am quoting:

"I certify that all statements made and all information contained in this Export Declaration are true and correct. I am aware of the penalties provided for false representation."

And I would therefore suggest either that the figures on quantity are accurate, unless the Census Bureau has again added them up incorrectly -- which they may very well have done either with respect to weight or value -- if they have done it again with respect to shipments, or that somebody is being dishonest; and in the absence of proof of dishonesty, I would suggest we have no choice but to accept, as I must accept the figures on value and weight, the figures on quantity. And I would like to submit this as an exhibit.

THE WITNESS: Mr. Chairman, I assume this was a question. Was it?

MR. COOPER: No, it was not. I said I was submitting it before my cross-examination.

THE WITNESS: If it wasn't a question, I think Mr. Cooper ought to be available for cross-examination.

\* \* \*

**EXHIBIT 3**

**NEWS**

from

**U.S. DEPARTMENT OF LABOR**

**W. Willard Wirtz, Secretary**

**WHPC-PR-232**

**FOR RELEASE: A.M. Papers, Saturday, October 23, 1965**

**SECRETARY OF LABOR NAMES MEMBERS OF  
PUERTO RICAN INDUSTRY COMMITTEE**

Secretary of Labor W. Willard Wirtz today announced the names of members of Industry Committee No. 75, which was recently established to consider minimum wage rates under the Fair Labor Standards Act for the Sweater and Knit Swimwear Industry in Puerto Rico. The committee hearing will begin on November 8 in Santurce, Puerto Rico.

Formal notice of the establishment of this committee was published in the August 13 Federal Register.

The members appointed are:

For the Public:

Dr. John P. Horlacher (Committee Chairman), Political Science Department Chairman, University of Pennsylvania, Philadelphia, Pennsylvania.

Louis Yagoda, Labor Relations Arbitrator, New Rochelle, New York.

Mariano Villaronga, Chairman of the Police Commission of Puerto Rico, Hato Rey, Puerto Rico.

For the Employers:

Herbert Alper, President, United Knitwear Manufacturers League, Inc., New York, New York.

Frank M. Titelman, President, Puritana Manufacturing Company, Inc., Aguas Buenas, Puerto Rico.

Leon Atkind, President, Rosita Mills, Inc., Bayamon, Puerto Rico.

For the Employees:

Emile J. DeLeo, Assistant Manager, Local 155, International Ladies' Garment Workers' Union, Brooklyn, New York.

Joseph Schwartz, Manager, Local 190, Knit Goods Workers' Union, Philadelphia, Pennsylvania.

Alberto E. Sanchez, Director of Organization, International Ladies' Garment Workers' Union, Santurce, Puerto Rico.

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### EXHIBIT 6

Data Pertinent to a Review of Minimum Wage Rates Established Under the Fair Labor Standards Act in - "The Sweater and Knit Swimwear Industry in Puerto Rico" - September 1965, United States Department of Labor.

[4]

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#### III. Description of the Industry in Puerto Rico

##### A. Wage and Hour Division Survey

In April 1965, the Wage and Hour Division Conducted a survey of all known firms in the Sweater and Knit Swimwear Industry in Puerto Rico. The survey included information on the number of firms, types of products, employment, wages, and other factors. The number of covered workers was obtained for the workday nearest to the 15th day of the months of February, May, August, and November of 1963 and 1964 and of February 1965. Wage data were obtained for the payroll week ending nearest to the 15th of February 1965.

##### B. Size of the Industry

According to the April 1965 survey, there were 18 firms with 2,204 covered workers employed in February 1965. Another firm, Malcolm Knitting Mills, Inc., was inactive from February to May 1964 and from December 1964 to the time of the most recent survey. The firm reported that plans were being made to resume its operations in May 1965.

During the past 7 years, the number of firms in the industry has remained nearly the same although some

changes in ownership occurred. No firm has begun or discontinued operations or changed ownership since the industry was last surveyed by the Wage and Hour Division in August 1964. A summary of closings and openings, and changes in ownership since 1959 is given in Appendix B.

### C. Size of Firms

In February 1965, 6 of the 18 firms in the industry had fewer than 50 workers; for the others, employment ranged upward to more than 400:

<u>Employment size</u>	<u>Number of firms</u>	<u>Number of covered workers</u>
All sizes	18	2,204
Less than 50	6	173
50 - 99	5	347
100 - 149	1	130
150 - 199	2	355
200 - 299	3	785
300 - 399	-	-
400 - 499	1	414

\* \* \*

### [8] F. Tax Exemption

The Commonwealth of Puerto Rico has adopted a broad program of incentives for the purposes of stimulating the establishment and growth of manufacturing and other enterprises on the island. Under this program, the Puerto Rican Government—besides offering direct technical and financial aid—grants for a limited duration exemption from the major taxes to firms fulfilling certain conditions and to qualified individuals receiving either dividend income from these firms or rental payments for leasing their properties to exempt operations. For example, exemption from income tax is granted to manufacturers of specified products for a period of 10 years and up to 17 years for new firms established in underdeveloped industrial areas. All eligible firms have the option of taking half of

the allowable exemption and doubling the length of the exemption period.

All of the firms in the industry have received tax exemption grants. For Gordonshire Knitting Mills, Inc., the tax exemption grant expired in October 1963.

In general, Federal tax laws are not applicable to the operations of companies in Puerto Rico. However, certain other taxes are effective, such as excises on taxable goods transported from Puerto Rico to the States, and payroll taxes for old age and survivors' benefits under the Federal Social Security Act. The Puerto Rican Employment Security Act of 1956, as amended, made Puerto Rico employers subject to payroll taxes for unemployment compensation purposes.

#### G. Shipments

Virtually all sweaters produced in Puerto Rico are shipped to other parts of the United States. Available data show that sweaters of man-made fibers except rayon and acetate account for the bulk of sweaters produced in Puerto Rico. In 1964 these sweaters accounted for approximately 95 percent of the total value of sweaters of wool and man-made fiber except rayon and acetate.

The value of shipments of sweaters from Puerto Rico to the States increased steadily from nearly \$14 million in 1960 to over \$18 million in 1963 and decreased to over \$15 million in 1964 (Table 2).

For 1963 and 1964, the quantity and value of shipments of sweaters, wool and man-made fibers, except rayon and acetate, by month from Puerto Rico to other parts of the United States are shown in Table 3. The value of these shipments reached peaks in June, October, and November in 1963 and in May, July, and November in 1964. The value of shipments for the 3 peak months represented approximately 40 percent of the total value of shipments for 1963 and 35 percent for 1964.

\* \* \*

## [14] VI. AVERAGE HOURLY EARNINGS

A. Puerto Rico1. Average hourly earnings

The average straight-time hourly earnings of all covered workers, excluding learners paid less than the wage order rate, were tabulated for a payroll week in February 1965. Average hourly earnings were \$1.27, the same as in August 1964. A comparison of the level of earnings for the industry for selected periods from 1959 to 1965 is given below, together with the applicable minimum wage rate and the percentage of workers paid at the applicable minimum wage rate:

<u>Survey period</u>	<u>Average straight-time hourly earnings</u>	<u>Applicable minimum wage rate</u>	<u>Percent of workers earning applicable minimum</u>
Sept-Nov 1959	\$1.06	\$0.96	50
May 1961	1.08	1.00	53
May 1962	1.11	1.04	53
June 1963	1.19	1.12	53
August 1964	1.27	1.17	54
February 1965	1.27	1.17	58

A distribution of covered employees by average straight-time hourly earnings and groups of firms as of February 1965 is contained in Table 15.

2. The impact of higher minimum wage rates

To give some indication of the relative effect of higher minimum wage rates, calculations were made of the percent increase in the hourly wage bill and the cents increase in average hourly earnings which would result from increasing the earnings of workers paid below a specified wage rate up to the specified rate in February 1965. Such increases in the wage bill and average hourly

earnings—which may be called the degree of impact—were calculated for the industry. This approach provides only an approximation of what would actually happen to wage bills and average hourly earnings as a result of the establishment of higher minimum wage rates because (1) the actual hourly wage bill is constantly changing and (2) the calculations do not include adjustments made in workers' wages which are above the selected higher minimum rate.

Table 16 shows the degree of impact of selected higher minimum wage rates on the wage bill and average hourly earnings in the industry. By way of illustration, the degree of impact of a minimum wage rate of \$1.20 [15] would be an increase of \$39.25 or 1.4 percent in the hourly wage bill and a 1.8-cent increase in the average hourly earnings.

#### B. The 50 States

Gross average hourly earnings (including premium pay for overtime and late shift work) of production workers in Knit Outerwear Mills in the 50 States are presented in Table 11. These earnings have increased from 3 to 5 cents an hour each year since 1961. In February 1965, the latest date for which data are available, gross average hourly earnings were \$1.83 an hour.

Gross average hourly earnings by area or state, with one exception, are not available for Knit Outerwear Mills. In Pennsylvania, gross average hourly earnings of production workers in Knit Outerwear Mills increased from \$1.73 an hour in 1961 to \$1.81 an hour in 1963.

#### C. Unionization

One of the 18 firms in the industry in Puerto Rico is operating under the terms of a collective bargaining agreement. This agreement between Coamo Knitting Mills, Inc., and the International Ladies' Garment Workers' Union, AFL-CIO, was recently negotiated and became effective April 1, 1965. The contract covering 116

employees provides a minimum hourly rate of \$1.27 an hour. The agreement also provides for paid vacations in the following manner:

- (1) Less than 1 year of service—1 week vacation at union minimum or 2 percent of year's earnings whichever is greater.
- (2) More than 1 year of service—2 weeks' vacation at union minimum or 4 percent of year's earnings whichever is greater.

[16] The International Ladies' Garment Workers' Union is the bargaining agent for approximately 20,000 workers employed by knitting mills in the metropolitan New York City and Philadelphia areas. The United Textile Workers of America Union also has representation in the industry.

In New York City, Local 155 of the ILGWU, representing about 12,000 workers, signed an agreement in July 1964 with the United Knitwear Manufacturers League, Inc. This 3-year agreement increased hourly rates from 11 to 20 cents an hour and provided for a 5-percent increase in piece rates. The minimum wage rates established by this contract are shown in Table 17.

This agreement also requires employers to pay an amount equal to 7 percent of the payroll to the union's fund for health, vacation, retirement, and severance. Other provisions of the contract are 5 paid holidays; 1 week's paid vacation; call-in pay; a standard workweek of 35 hours; and time and one-half for hours worked in excess of 7 hours a day or 35 hours a week.

In the Philadelphia area, Local 190 of the ILGWU, representing over 8,000 workers, signed a 3-year agreement with the Knitted Outerwear Manufacturers Association, Pennsylvania District, effective September 3, 1963.

D. Consumer Price Index

Table 18 shows the Consumer Price Index for Wage Earners' Families in Puerto Rico and the Consumer Price Index for Urban Wage Earners and Clerical Workers in the States for all items from 1960 to 1965. In that period, the index for Puerto Rico rose about 9 percent and the index for the States increased over 4 percent.

# The Sweater and Knit Swimwear Industry in Puerto Rico

## List of Firms Beginning Operations, Discontinuing Operations, and Changing Ownership, 1959-1965

### Firms Beginning Operations

<u>Name of firm</u>	<u>Date operations began</u>	<u>Affiliation</u>
Rosita, Inc.	July 1960	Gordonshire
Purabo Knitting Mills, Inc.	January 1963	Finetex
Malcolm Knitting Mills, Inc.	December 1962	Gordonshire
Desana Dyeing and Finishing, Inc.	January 1963	Glamourette
Intero, Inc.	September 1959	Gordonshire
Andy Textile Mills, Inc.	April 1962	Glamourette
Weststone Knitting Mills, Inc.	March 1959	Northridge

### Firms Discontinuing Operations

<u>Name of firm</u>	<u>Period of operations</u>
Arca Knit Corp.	April 1957 - May 1959
Caribe Knitting Mills #2	(Unknown) - January 1960
Island Knitting Mills, Inc.	April 1957 - September 1962
Inteco (P. R.), Inc.	April 1955 - July 1964
Southdale Knitting Mills, Inc.	January 1961 - June 1962

### Firms Which Had a Change in Ownership

<u>Name of firm</u>	<u>Period of operations under previous owner</u>	<u>New owner (and affiliation)</u>
Intero Manufacturing Corp.	April 1952 - January 1962	Puritan Sportswear, Corp., controlled by Warner Brothers since January 1964
Caribe Knitting Mills #1	March 1956 - January 1960	Northridge Knitting Mills, Inc.
Insular Dye Works, Inc.	July 1955 - January 1962	Puritan Sportswear, Corp., controlled by Warner Brothers since January 1964
Arta Mills, Inc.	October 1956 - April 1962	Colfax Industries (Rosita)

**The Sweater and Knit Swimwear Industry in Puerto Rico**

**List of Firms Beginning Operations, Discontinuing Operations,  
and Changing Ownership, 1959-1965  
(concluded)**

**Firms Which Had a Change in Ownership  
(concluded)**

<u>Name of firm</u>	<u>Period of operations under previous owner</u>	<u>New owner (and affiliation)</u>
Seaco, Inc.	January 1957 - May 1960	Hannit Corp. (Local trade)
Somtex Knitting Mills, Inc.	March 1952 - March 1961	Sigo Corp.
Superior Knitting Mills, Inc.	January 1954 - January 1962	Puritan Sportswear Corp., controlled Warner Brothers at January 1964
Trio Knitting Corp.	May 1954 - October 1962	Cosmo Knitting Mill Inc.
Yanco Knitting Mills, Inc.	March 1954 - October 1960	Yanco Super Knits, Ltd.

Source: Economic Development Administration and surveys conducted by the  
Wage and Hour Division.

The Sweater and Knit Swimwear Industry in Puerto Rico  
Selected Characteristics of Firms in the Gordonshire Group,  
April 1965

Characteristic	Bonita, Inc., Cayey
Year established	1960
Principal related companies	Gordonshire group: MKM Knitting Mills, Inc., and Darlene Knitwear, Inc., both of Manchester, N. H.; Finrico Co., Gordonshire Knitting Mills, Inc., Malcolm Knitting Mills, Inc., Tinto, Inc., and Rizotex, Inc., all of Cayey.
Principal products	Women's knit swimwear (60%), women's cut-and-sewn swimwear (15%), combination swimwear (15%), cut-and-sewn skirts (5%), and cut-and-sewn stretch slacks (5%).
Materials used and source	Wool, cotton, and other fabric, elastic, sewing yarn, and finishing materials from mainland. Swimwear blanks from MKM Knitting Mills, Manchester, N. H., and Malcolm Knitting Mills, Cayey.
Operations performed	Sewing, trimming, and all finishing operations, except dyeing and related processes.
Disposition of products and method of shipment	Entire output is shipped to MKM Knitting Mills, Inc., N. H.
Employment and (average hourly earnings)	August 1964                      79            (\$1.20) February 1965                  276           (\$1.22)
Seasonality:	
Peak	October - February            (300 employees)
Slack	March - September            ( 50 employees)
Union	No
Tax exemption	Yes
Remarks	Includes employment and earnings of workers producing skirts, slacks, and other needlework products classified in the Needlework and Fabricated Textile Products Industry in Puerto Rico because the firm does not segregate its payroll to pay the lower wage order minimum (\$1.11) applicable to these products. Swimwear is sent to its local affiliate, Tinto, Inc., Cayey, for dyeing.

The Sweater and Knit Swimwear Industry in Puerto Rico  
 Selected Characteristics of Firms in the Gordonshire Group,  
 April 1965 (continued)

Characteristic	Finrico Company, Cayey		
Year established	1955		
Principal related companies	Gordonshire group.		
Principal products	Finishing of sweaters for Gordonshire Knitting Mills, Inc.		
Materials used and source	Buttons, ribbons, zippers, and labels from the mainland. Thread is obtained locally. and boxes and plastic bags come from both local and mainland sources.		
Operations performed	Sorting, seaming, marking, sewing in ribbon, buttonholing, sewing on buttons and zippers, trimming, pressing, examining, labeling, packing, and shipping.		
Disposition of products and method of shipment	Total output shipped to mainland affiliate, 60-70% by air freight, remainder by ocean freight.		
Employment and (average hourly earnings)	August 1964	71	(\$1.20)
	February 1965	59	(\$1.19)
Seasonality:			
Peak	March - November	(150 employees)	
Slack	December - February	(25 employees)	
Union	No		
Tax exemption	Yes		
Remarks	Piece rate in all departments. Knitting and assembling of parts is performed by Gordonshire Knitting Mills, Inc.		

The Sweater and Knit Swimwear Industry in Puerto Rico  
 Selected Characteristics of Firms in the Gordonshire Group,  
 April 1965 (continued)

Characteristic	Gordonshire Knitting Mills, Inc., Cayey		
Year established	1953		
Principal related companies	Gordonshire group.		
Principal products	Full-fashioned sweaters for women (70%) and knitted shirts for men (30%).		
Materials used and source	Orlon, banlon, and wool yarn, thread, and labels from the mainland.		
Operations performed	Knitting and assembling of sweater parts, and semi-finishing in the greige. Sent to affiliate, Finrico Co., or Malcolm Knitting Mills, Inc., for finishing operations and packing.		
Disposition of products and method of shipment	About 20% of output shipped in the greige to MKM Knitting Mills, Inc., N. H., mostly by air freight. Remainder of output sent to Finrico Co. for finishing and packing and sold to MKM Knitting Mills.		
Employment and (average hourly earnings)	August 1964	293	(\$1.28)
	February 1965	284	(\$1.30)
Seasonality			
Peak	March - September	(300-350 employees)	
Slack	October - February	(100-150 employees)	
Union	No		
Tax exemption	No		
Remarks	Piece rate in effect in all departments. There are 150 styles of sweaters produced. Prices: in the greige to MKM Knitting Mills, Inc. -- \$3.00 to \$4.00 each; finished sweaters - \$4.00 to \$5.00 each. Dyeing operations are performed by Tinto, Inc.		

**The Sweater and Knit Swimwear Industry in Puerto Rico**  
**Selected Characteristics of Firms in the Gordonshire Group,**  
**April 1965 (concluded)**

Characteristic	Tinto, Inc., Cayey
Year established	1959
Principal related companies	Gordonshire group.
Principal products	Dyeing of sweaters, knitted shirts, and swimwear for Puerto Rican affiliate.
Materials used and source	Over 50% of the chemicals and dyestuff is purchased locally, the remainder is purchased from the mainland.
Operations performed	Washing, scouring, chemical treatment, dyeing, tumbling, and processing.
Disposition of products and method of shipment	All products returned to Bonita, Inc., and Gordonshire Knitting Mills, Inc., in Cayey.
Employment and (average hourly earnings)	August 1964      26      (\$1.22) February 1965    15      (\$1.28)
Seasonality:	
Peak	Not seasonal.
Slack	
Union	No
Tax exemption	Yes
Remarks	Piece rate in effect in all but dyeing operations.

## The Sweater and Knit Swimwear Industry in Puerto Rico

Table 3. Shipments of Sweaters of Wool and Man-made Fiber, except Rayon or Acetate, from Puerto Rico to Other Parts of the United States, by Months, 1963 through June 1965

Month	1963	1964	1965
<u>Quantity (Thousand dozens)</u>			
January	11	20	10
February	24	20	16
March	24	14	24
April	33	16	15
May	39	50	113
June	47	43	50
July	44	50	
August	41	57	
September	28	32	
October	45	29	
November	40	31	
December	16	24	
<u>Value (Thousand dollars)</u>			
January	\$ 449	\$ 613	\$ 591
February	709	935	886
March	812	631	1,417
April	952	842	1,824
May	1,871	1,847	2,565
June	2,730	1,346	3,894
July	1,743	1,644	
August	1,851	1,314	
September	1,666	1,494	
October	2,331	1,375	
November	2,082	1,851	
December	921	1,436	

Source: U. S. Bureau of the Census, Report No. FT800, United States Trade with Puerto Rico and with United States Possessions.

## The Knit Outerwear Industry in the 50 States

Table 12. Number of Establishments and Production Workers, by Region, 1958 and 1963

Region	Number of		Production workers			
	establishments		Number		Percent	
	1958	1963	1958	1963	1958	1963
Total	<u>1,123</u>	<u>1,172</u>	<u>52,608</u>	<u>60,219</u>	<u>100</u>	<u>100</u>
New England	49	47	5,251	4,429	10	7
Massachusetts	26	20	3,032	2,233		
Middle Atlantic	912	919	35,714	36,574	68	61
New York	680	681	19,599	20,260		
New Jersey	117	122	4,569	4,482		
Pennsylvania	115	116	11,546	11,832		
East North Central	39	40	2,894	3,990	6	7
Ohio	16	15	1,911	2,257		
Wisconsin	12	10	747	842		
South	52	78	6,747	12,877	13	21
Virginia	11	10	2,519	4,540		
North Carolina	21	35	1,473	3,149		
West North Central	6	-	300	-	1	-
West	65	88	1,702	2,349	3	4

Source: U. S. Bureau of the Census, 1958 Census of Manufactures, and 1963 Census of Manufactures, Preliminary Report.

## The Sweater and Knit Swimwear Industry in Puerto Rico

Table 19. Profit and Loss Data for Firms in the Sweater and Knit Swimwear Industry, Years Ended in 1962, 1963 and 1964

[Dollar amounts in thousands]

Item	Number of firms reporting			Amount or percent		
	1962	1963	1964	1962	1963	1964
Net sales	15	17	18	\$19,243	\$17,798	\$15,869
Combined net profit and loss	15	17	18	\$ 1,166	\$ 384	\$ 450
As a percent of sales	15	17	18	6.1	2.2	2.8
Net profit	12	14	12	\$ 1,238	\$ 1,057	\$ 805
As a percent of sales	12	14	12	10.9	8.4	10.1
Net loss	3	3	6	\$ 72	\$ 664	\$ 355
As a percent of sales	3	3	6	1.0	12.6	4.5
Salaries	12	13	15	\$ 292	\$ 297	\$ 346
Wages	13	15	18	\$ 4,230	\$ 3,711	\$ 4,255
As a percent of sales	13	15	18	25.0	23.8	26.8
Freight	12	12	18	\$ 145	\$ 195	\$ 153
As a percent of sales	12	12	18	.9	1.8	1.0
As a percent of wages	12	11	18	3.8	8.0	3.6
Rent	9	13	13	\$ 102	\$ 129	\$ 115
As a percent of sales	9	13	13	.7	1.3	1.3
As a percent of wages	9	12	13	8.5	5.3	4.4
Beginning inventory	12	16	17	\$ 1,564	\$ 2,414	\$ 2,782
Ending inventory	14	16	17	\$ 2,338	\$ 3,014	\$ 1,998

Source: Information submitted by firms.

The Sweater and Knit Swimwear Industry in Puerto Rico  
Balance Sheet Information for Other Firms in the Industry, Periods Ended  
in 1962-1964

[Thousands of dollars]

Balance sheet item	: Coamo Knitting Mills, Inc.	
	: Apr. 30, : 1963	: Apr. 30, : 1964
<u>ASSETS</u>		
Current Assets	\$ 14	\$ 11
Cash	-	-
Investments	213	225
Accounts Receivable	1	1/
Notes Receivable	108	41
Inventory	2	1
Other Current Assets	338	278
Total		
Depreciable (fixed) Assets:		
Property, Plant and Equipment	-	252
Gross	-	143
Less: Depreciation	105	109
Net	1	1
Other Assets	444	388
Total Assets		
<u>LIABILITIES</u>		
Accounts Payable	92	31
Notes Payable	175	-
Mortgages Payable	14	15
Other Liabilities	281	46
Total		
<u>NET WORTH</u>		
Paid-in Capital	25	25
Earned Surplus	138	317
Capital Surplus	163	342
Total		
Total Liabilities and	444	388
Net Worth		

See footnote at end of table.

**EXHIBIT 7**

[ Supplement to the Economic Report on]

The Sweater and Knit Swimwear Industry in Puerto Rico

[October 1965]

Table 3 (Revised). Shipments of Sweaters of Wool and Man-made Fiber, Except Rayon or Acetate, from Puerto Rico to Other Parts of the United States, by Months, 1963 through July 1965

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[Information has been received indicating that this table contains an inaccuracy. Verification of certain of the data in the table has been requested of the Bureau of the Census. Any revisions issued by the Bureau will be presented at the hearing of Industry Committee No. 75.]

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Source: U. S. Bureau of the Census, Report No. FT800, United States Trade with Puerto Rico and with United States Possessions.

## The Sweater and Knit Swimwear Industry in Puerto Rico

Table 9 (Revised). Number of Covered Workers, Including Learners, for Selected Dates, 1959-1965

Month and date	1959	1960	1961	1962	1963	1964	1965
February							
1	2,128		2,044	2,392		2,118	
15					2,122	2,138	2,204
March							
18					2,346		
May							
1	2,478	2,164	2,464	2,594		2,048	
15					2,371	2,039	2,509
June							
18			2,413	2,668	2,276		
August							
1	2,662	2,159	2,432	2,625	2,294	2,175	
15					2,294	2,405	2,388
September							
18				2,662			
November							
1	2,571	2,028	2,473		2,160		
15					2,030	2,236	
December							
18				1,763			

Source: Surveys conducted by the Wage and Hour Division.

## The Knit Outerwear Industry in the 50 States

Table 11 (Revised). Employment and Earnings: Knit Outerwear, Production Workers, 1961-1965

Month	: 1961	: 1962	: 1963	: 1964	: 1965
<u>Employment (in thousands)</u>					
Yearly average	53.0	57.2	56.3	58.1	
January	42.9	50.1	50.0	49.3	55.0
February	45.0	52.4	52.2	52.9	58.2
March	48.1	55.3	55.4	55.5	61.5
April	52.2	57.7	56.6	57.0	64.0
May	54.9	59.0	57.8	59.0	64.3
June	56.4	61.2	59.3	60.4	65.7 1/
July	54.9	59.7	58.8	59.5	
August	56.8	60.9	58.9	62.0	
September	57.2	59.9	59.2	61.9	
October	57.7	59.7	59.1	62.2	
November	56.6	58.0	57.2	60.8	
December	52.9	53.0	51.5	57.0	
<u>Average hourly earnings</u>					
Yearly average	\$1.66	\$1.69	\$1.73	\$1.78	
January	1.63	1.69	1.70	1.76	\$1.82
February	1.65	1.69	1.71	1.77	1.84
March	1.64	1.69	1.72	1.77	1.82
April	1.64	1.69	1.69	1.78	1.82
May	1.65	1.69	1.71	1.76	1.83
June	1.65	1.69	1.72	1.77	1.84 1/
July	1.64	1.69	1.73	1.78	
August	1.66	1.69	1.72	1.79	
September	1.67	1.71	1.77	1.79	
October	1.70	1.70	1.78	1.80	
November	1.70	1.71	1.77	1.80	
December	1.69	1.69	1.76	1.80	

1/ Preliminary.

Source: U. S. Bureau of Labor Statistics, Employment and Earnings Statistics for the United States, 1909-1964.

**EXHIBIT 11**

[Received Oct 28, 1965, W & H & PC Divs.  
Santurce, Puerto Rico]

[1]

UNITED KNITWEAR MANUFACTURERS LEAGUE, INC.  
51 Chambers Street, New York 7, N.Y.  
October 27, 1965

Regional Director  
Wage and Hour Division  
United States Dept. of Labor  
Concominio San Alberto Building  
1200 Ponce de Leon Avenue  
Santurce, Puerto Rico

Dear Sir:

This statement is respectfully submitted for the consideration of Industry Committee 75, which we are advised has, for its deliberation, the question of the minimum wage rate which should be made applicable to the sweater and swimwear industry in Puerto Rico pursuant to the Fair Labor Standards Act, as amended.

This organization is constituted of manufacturers of sweaters, swimwear and other knitted apparel. Some of our members manufacture merchandise for sale to retail stores while others (the majority) make goods as contractors for knitwear jobbers and distributors. Our members employ approximately 9300 persons in the City of New York and its environs. Needless to say, the wage rates of these employees is a prime consideration.

One of the major sources developed in recent years for merchandise competitive to the goods made on the mainland is the Commonwealth of Puerto Rico. The industry has been

\* \* \*

[4]

that even if the minimum wage required in Puerto Rico for this industry were fixed at the level of \$1.25 per

hour, there would still remain a very wide and significant advantage in labor rates to the Puerto Rican producer.

We, accordingly, hope that this Committee will recognize that the time has come for the application of the same statutory minimum to the knitwear industry in Puerto Rico as applies to the mainland, and upon all the foregoing considerations we respectfully submit that should be the recommendation of this Committee.

Respectfully submitted,

United Knitwear Manufacturers  
League

By /s/ Abraham Kreiner  
Secretary

State of New York )

County of New York) SS.:

Sworn to before me this \_\_\_\_ day of October, 1965.

Jerome Weisberger, Notary Public

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**EXHIBIT 12**

[Received Nov 1, 1965, W & H & PC Divs. Santurce,  
Puerto Rico]

[1] INTERNATIONAL LADIES' GARMENT  
WORKERS' UNION  
AFL-CIO

1710 Broadway, New York 19, N.Y.

Before Industry Committee) SS:

No. 75 for Puerto Rico )

**PREHEARING STATEMENT ON BEHALF OF  
INTERNATIONAL LADIES' GARMENT WORKERS'  
UNION (AFL-CIO)**

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1. This prehearing statement is filed on behalf of the International Ladies' Garment Workers' Union (AFL-CIO), hereafter referred to as ILGWU, in accordance

with the requirements set forth in Section 511.8 of the Code of Federal Regulations (Title 29) in order to qualify ILGWU as a party in the proceedings before Industry Committee No. 75.

2. ILGWU is a labor organization with members in the garment industry generally, and in the Sweater and Knit Swimwear Industry in particular, both stateside and in Puerto Rico. As such it has a distinct and substantial interest in the proceedings of Industry Committee No. 75 and qualifies to participate therein as an interested person.

[2] 3. The Sweater and Knit Swimwear Industry of Puerto Rico could well pay its employees a minimum wage in excess of \$1.25 an hour and still have a competitive advantage over the same industry in the United States outside of Puerto Rico and do so without curtailing employment in Puerto Rico. The Fair Labor Standards Act, as amended, limits however the recommendations of an Industry Committee to the statutory \$1.25 an hour. Because of this limitation, ILGWU will support the minimum wage of only \$1.25 for this Puerto Rico industry.

4. The following is a summary of the evidence which will be developed in the course of the testimony on behalf of the ILGWU:

- a. The intent of the Fair Labor Standards Act is to reach the same minimum wage in this industry in Puerto Rico as stateside as rapidly as is economically feasible.
- b. The existing minimum wage of \$1.17 in this industry in Puerto Rico falls short of the level contemplated under the Act.
- c. The \$1.25 minimum wage can readily be met by this industry in Puerto Rico and still leave it with a competitive edge over the stateside industry and do so without any negative effect on this industry's employment.
- d. The \$1.25 minimum in this industry in Puerto Rico is fully justified on economic and legal grounds,

with due regard and consideration to economic and competitive conditions which affect operations in this industry.

- e. The \$1.25 minimum wage in this industry in Puerto Rico will inure not only to the benefit of the workers and the industry in question but also to the welfare of the Commonwealth of Puerto Rico and its people.

[3] 5. The written data which will be introduced in evidence in the course of the hearings is attached hereto.

6. The case on behalf of ILGWU before the Committee will be presented by Dr. Lazare Teper, Director, Research Department, ILGWU, 1710 Broadway, New York, N.Y., 10019.

7. Dr. Lazare Teper, Director, Research Department, ILGWU, 1710 Broadway, New York, N.Y. 10019 will be the witness on behalf of the ILGWU.

8. The approximate length of time needed to present the case and offer direct testimony will be five hours.

Respectfully submitted,  
/s/ Lazare Teper, Director  
Research Department

October 29, 1965

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## (A) Shipments of Sweaters, Puerto Rico to the United States, 1958-1965

Period	Dozens	Value
1958	288,458	\$12,127,269
1959	400,013	15,035,282
1960	334,524	13,834,787
1961	384,400	14,137,509
1962	459,980	17,621,525
1963	392,592	18,117,241
1964	385,804	15,328,650
Jan-Aug 1964	269,620	9,173,037
Jan-Aug 1965#	263,817	17,547,521

(B) Value of Shipments, Sweaters, United States, 1958-1965  
(thousands of dollars)

Period	Men's and Boys <sup>1</sup>	Women's, Misses <sup>1</sup> and Juniors <sup>1</sup>	Girls', Children's and Infants <sup>1</sup>	Total
1958	\$ 122,624	\$ 267,395	\$ 58,652	\$ 448,671
1959	151,238	272,691	63,532	487,461
1960	149,012	266,446	58,873	474,331
1961	152,180	260,483	58,923	471,586
1962	178,091	263,130	65,587	506,808
1963	204,795	257,253	61,609	523,657
1964	N.A.	N.A.	N.A.	N.A.
Jan-Aug 1964	N.A.	N.A.	N.A.	N.A.
Jan-Aug 1965	N.A.	N.A.	N.A.	N.A.

(C) Sweater Production, United States, 1958-1965  
(thousands of dozens)

Period	Men's	Boys <sup>1</sup>	Women's Misses <sup>1</sup> and Juniors <sup>1</sup>	Girls', Children's and Infants <sup>1</sup>	Total*
1958	2,341	1,034	7,314	3,065	13,788
1959	2,677	1,002	7,299	2,968	13,974
1960	2,398	1,051	6,533	2,893	12,903
1961	2,588	909	6,464	2,685	12,664
1962	2,854	980	6,125	3,046	13,020
1963	3,162	911	5,975	2,892	12,956
1964	3,419p	N.A.	6,817p	N.A.	N.A.
Jan-Aug 1964	1,940p	N.A.	3,755p	N.A.	N.A.
Jan-Aug 1965	1,921p	N.A.	p	N.A.	N.A.

N.A. — Not Available # Data revised subsequent to Aug. 13, 1965. p-preliminary

\* Includes small quantities of sweaters not specified by kind as follows:

1958 — 34,000 doz.; 1959—28,000 doz.; 1960—28,000 doz.; 1961—18,000 doz.;  
1962—15,000 doz.; and 1963—16,000 doz.SOURCE: U.S. Bureau of <sup>REPRO</sup>Census and Bureau of Customs <sup>REPRO</sup>

## SHIPMENTS OF KNIT OUTERWEAR, PUERTO RICO TO THE UNITED STATES

(A) Shipments of Sweaters, Puerto Rico to the United States,  
Year Ending August 31, 1959 through year ending August 31, 1965

Year Ending	Quantity (dozens)	Value
Aug. 31, 1959	364,390	\$13,820,221
Aug. 31, 1960	340,032	13,900,921
Aug. 31, 1961	331,658	13,685,026
Aug. 31, 1962	469,696	17,464,911
Aug. 31, 1963	454,720	17,524,305
Aug. 31, 1964	398,490	16,173,207
Aug. 31, 1965	411,824*	23,724,981*

(B) Shipments of Sweaters, Puerto Rico to the United States,  
First Eight Months of Year, 1958 to 1965

Period	Quantity (dozens)	Value
Jan-Aug, 1958	170,602	\$ 7,478,059
Jan-Aug, 1959	246,534	9,171,011
Jan-Aug, 1960	186,553	8,036,650
Jan-Aug, 1961	183,686	7,886,889
Jan-Aug, 1962	268,982	11,214,291
Jan-Aug, 1963	263,722	11,117,071
Jan-Aug, 1964	269,620	9,173,037
Jan-Aug, 1965	263,817*	17,547,521*

(C) Shipments of Knit Shirts and Swimwear, Puerto Rico to the United States,  
First Eight Months, 1965

Product	Quantity (dozens)	Value
Knit sport shirts, except T-shirts	41,958#	\$ 473,677#
Swimwear	10,439	1,013,639

\*Data revised subsequent to August 13, 1965

#Exclusive of shipments of men's and boys' knit shirts for January through March of 1965 for which no figures were separately reported.

Source: U.S. Bureau of the Census and Bureau of Customs

(A) Production, Men's, Women's, Misses' and Juniors' Sweaters,  
United States, Year Ending August 31, 1959 through Year Ending August 31, 1965  
(thousands of dozens)

Year Ending	Men's	Women's, Misses' and Juniors'	Men's, Women's, Misses' and Juniors'
Aug. 31, 1959	2,608	7,846	10,454
Aug. 31, 1960	2,650	6,754	9,404
Aug. 31, 1961	2,317	6,369	8,686
Aug. 31, 1962	2,783	6,266	9,049
Aug. 31, 1963	3,044	6,073	9,117
Aug. 31, 1964*	3,343	6,178	9,521
Aug. 31, 1965*	3,400		

(B) Production, Men's, Women's, Misses' and Juniors' Sweaters,  
United States, First Eight Months of Year, 1958 - 1965

Period	Men's	Women's Misses' and Juniors'	Men's, Women's, Misses' and Juniors'
Jan-Aug, 1958	1,219	3,979	5,198
Jan-Aug, 1959	1,482	4,511	5,993
Jan-Aug, 1960	1,455	3,966	5,421
Jan-Aug, 1961	1,374	3,802	5,176
Jan-Aug, 1962	1,569	3,604	5,173
Jan-Aug, 1963	1,759	3,552	5,311
Jan-Aug, 1964*	1,940	3,755	5,695
Jan-Aug, 1965*	1,921		

- Notes: 1. Monthly data on dollar volume are not available.  
2. Monthly figures correspond to the published annual data.  
\* Preliminary

SOURCE: U.S. Bureau of the Census

Relation between Average Hourly Earnings and Net Profits  
as a Per Cent of Net Sales, Knit Outerwear Industry,  
United States, 1935-1964

Year	Average Hourly Earnings	Net Profits to Net Sales
1935	\$ .47	0.44%
1936	\$ .46	1.18%
1937	\$ .48	0.32%
1938	\$ .48	0.76%
1939	\$ .48	1.26%
1940	\$ .50	0.97%
1941	\$ .52	2.18%
1942	\$ .53	3.13%
1943	\$ .60	2.85%
1944	\$ .77	3.60%
1945	\$ .83	3.96%
1946	\$ .92	5.27%
1947	\$ .99	4.22%
1948	\$1.04	2.06%
1949	\$1.07	1.66%
1950	\$1.13	3.36%
1951	\$1.22	2.16%
1952	\$1.25	1.96%
1953	\$1.32	2.14%
1954	\$1.38	1.72%
1955	\$1.39	1.58%
1956	\$1.46	1.25%
1957	\$1.51	1.15%
1958	\$1.53	0.96%
1959	\$1.55	0.97%
1960	\$1.60	0.84%
1961	\$1.66	0.90%
1962	\$1.69	1.20%
1963	\$1.73	1.76%
1964	\$1.78	2.18%

The relationship between the year-to-year changes in average hourly earnings and in net profits on sales can be measured by a correlation coefficient. If such a coefficient were equal +1 it would indicate that there is a perfect positive relationship between the two of data with both moving in the same direction. If the coefficient were to equal -1, it would indicate that there is a perfect inverse relationship, with increased earnings paralleled by decreased profits. If the coefficient equals or is near zero, the measure indicates a complete absence of interrelationship. The coefficient of correlation computed from the above data equals -0.08 and demonstrates a complete lack of correlation between the changes in average hourly earnings and those in net profits. A similar coefficient of correlation computed by ranking the year-to-year changes in order of their magnitude equals -0.07, again demonstrating the lack of correlation between these variables.

Average Hourly Earnings — U.S. Bureau of Labor Statistics (data published in its Bulletin No. 1312-2 linked with data in its Bulletin No. 916).  
Net Profits to Sales — Dun and Bradstreet, Inc.

Employment and Earnings in Puerto Rico Plants  
Promoted by the Economic Development Administration

Period	Number of plants in existence	Number of plants providing reports	Employment in reporting plants	Weekly payroll in reporting plants (*)
June 1947	13	10	1,300	\$ 20,500
June 1948	24	17	2,200	32,100
June 1949	52	32	3,700	48,200
June 1950	83	72	6,300	84,400
June 1951	114	107	8,600	124,300
June 1952	166	157	11,800	174,100
June 1953	229	219	18,400	304,200
June 1954	282	264	21,700	360,200
June 1955	303	292	25,700	496,100
June 1956	364	354	30,100	674,400
June 1957	426	416	34,700	919,100
June 1958	474	452	33,300	916,200
June 1959	537	514	41,500	1,261,100
June 1960	605	571	45,900	1,459,500
June 1961	667	619	50,700	1,724,300
June 1962	763	710	58,800	2,152,200
June 1963	836	762	60,600	2,292,500
June 1964	935	810	64,300	2,568,400
Dec. 1964	989	862	70,800	2,944,800

(\*) Payrolls for production and related workers only.

NOTE: Because not every plant reports, the growth in employment and payrolls is actually understated by this table. For example, in June, 1947 only 3 plants failed to file reports; in December, 1964 they numbered 127.

SOURCE: Commonwealth of Puerto Rico, Economic Development Administration.

## EXHIBIT 13

PREHEARING STATEMENT OF THE SWEATER AND KNIT SWIMWEAR INDUSTRY IN PUERTO  
RICO - Industry Committee No. 75

<u>Name of Company</u>	<u>Date Operations Started</u>	<u>Product of Service</u>	<u>Number of Covered Employees</u>	<u>Mainland Affiliate</u>
<b>A. <u>Alto Group:</u></b>		<b>*FF Mens' &amp; Women's Swtrs.</b>	<b>504</b>	<b>(1) <u>Landau</u></b>
1) Alto	April, 1952	FF - Finishing	285	
2) Superior	January, 1954	" - Knits Fabric Parts	169	
3) Insular Dye	July, 1955	" - Washing, Dyeing	50	
<b>B. <u>Gordonshire Group:</u></b>		<b>FF Womens' Sweaters</b>	<b>797</b>	<b>(2) <u>M.K.M.</u></b>
4) Gordonshire	Sept., 1953	FF - Knits Fabric Parts Yarn from Cayer Spinning & Rizotex	649	
5) Tinto	Sept., 1959	" - Dyeing (Started Operations 9-59)	0	
6) Finrico	July, 1955	FF - Finishing	148	
<b>C. <u>Northridge Group:</u></b>		<b>FF and *CS Women's Swtrs.</b>	<b>244</b>	<b>(3) <u>Greystone</u></b>
7) Northridge	February, 1957	Knitting & Finishing FF Women's Sweaters	131	
8) Weststone	March, 1959	Knitting Fabric, CS, finishing of women's CS Sweaters	113	
<b>D. <u>Others:</u></b>		<b>Total in Groups:</b>	<b>1,545</b>	
9) Caribe	June, 1953	Women's & Children's FF & CS sweaters, mens' knitted shirts & knitting and finishing	232	<b>(4) <u>Monitor</u></b>
10. Finetex	June, 1956	FF Women's sweaters - Knitting & Finishing	107	<b>(5) <u>Messing</u></b>

The Sweater & Knit Swimwear Industry  
in Puerto Rico on August 1, 1959  
(Continued)

<u>Name of Company</u>	<u>Date Operations Started</u>	<u>Product of Service</u>	<u>Number of Covered Employees</u>	<u>Mainland Affiliate</u>	
11) Glamourette	January, 1956	Women's, Men's & Children's FF & CS Sweaters; Knitting & Finishing; Cutting & Sewing	164	(6) Tennessee	
12) Island	April, 1957	Women's & Men's FF Sweaters-Knitting Only (Finished in U.S.)	56	(7) Glasco	
9 13) Knitco	April, 1955	Women's FF Sweaters; Men's Shirts-Knitting, Cutting, Sewing, Finishing	142	(8) Vargish	182
14) Marita	Oct., 1956	Women's FF Sweaters; Men's Shirts-Knitting & Finishing	84	(9) Bamberger	
15) Seaco	January, 1957	Women's FF Sweaters-Knitting & Finishing (Temp. closed 4/30/59-10/2/59) (9 Employees 11/1/59)	0	(10) Capital	
16) Sometex	March, 1952	Women's FF Sweaters; Knitting & Finishing	97	(11) Lillivette	
17) Textile Dye	April, 1955	Sweater Dyeing	43	(12) Textile	
18) Pan-American	April, 1949	Clipping Rhinestones on Sweaters	3	(13) Capital	

The Sweater & Knit Swimwear Industry  
in Puerto Rico on August 1, 1959  
(Continued)

<u>Name of Company</u>	<u>Date Operations Started</u>	<u>Product of Service</u>	<u>Number of Covered Employees</u>	<u>Mainland Affiliate</u>	
19) Trio	May, 1954	Women's FF Sweaters & Men's Knitted Shirts Knitting & Finishing	119	(14) Hialeah	
20) Yauco	March, 1954	Women's FF Sweaters Knitting & Finishing	70	(15) Bermuda	183
		Total Non-Group	<u>1,117</u>	.	
		Total All Companies	<u>2,662</u>		

Source: Data Pertinent to Review of Minimum Wage Rates;  
Wage & Hour Division, U. S. Department of Labor

Note! \*FF = Full Fashioned  
\*CS - Cut & Sewn

The Sweater & Knit Swimwear Industry  
in Puerto Rico on August 15, 1965

<u>Name of Company</u>	<u>Year Established</u>	<u>Principal Product</u>	<u>Operations Performed</u>	<u>Number of Covered Employees</u>	<u>Mainland Affiliate</u>
<u>A. Finetex Group:</u>		<u>Women's FF &amp; CS Sweaters</u>		<u>97</u>	(1) Blairmoor (Messing)
1. Finetex	1956	Women's FF Sweaters	Flat & FF Knitting & Finishing; Flat Finishing	63	
2. Gurabo	1963	Women's CS Sweaters	Cs, Finishing	34	
<u>B. Glamourette Group:</u>		<u>Women's &amp; Men's FF Sweaters (95%); CS Sweaters (5%)</u>		<u>211</u>	(2) Tennessee
3. Glamourette	1956	<u>Women's &amp; Men's FF &amp; CS Sweaters</u>	Knitting & Finishing	174	
4. Wendy	1961	Women's & Men's FF & CS Sweaters	Knitting(all to Glamourette)	15	
5. Messana	1962	Women's & Men's FF & CS Sweaters	Dyeing & Washing	27	
<u>C. Gordonshire Group:</u>		<u>FF &amp; CS Women's &amp; Men's Sweaters (Hosiery)</u> <u>Men's Knitted Shirts</u> <u>Women's Swimwear(Skirts &amp; Slacks (10%))</u>		<u>677</u>	
6. Bonita	1960	Women's CS & FF Swimwear (Skirts & Slacks-10%)	Sewing & Finishing Swimwear	82	(3) M.K.M.
7. Gordonshire	1953	Women's FF Sweaters(70%) Men's Knitted Shirts(30%)	Knitting & Assembling Sweater Parts	417	

The Sweater & Knit Swimwear Industry  
in Puerto Rico on August 15, 1965  
(Continued)

<u>Name of Company</u>	<u>YEAR Established</u>	<u>Principal Product</u>	<u>Operations Performed</u>	<u>Number of Covered Employees</u>	<u>Mainland Affiliate</u>
8. Finrico	1955	Women's FF Sweaters	Finishing Sweaters	111	
9. Tinto	1959		Dyeing	39	
10. Malcolm	1962	Womens CS & FF Sweaters	Knitting CS Sweaters; Finishing FF Sweaters	28	
D. Northridge Group:		Womens FF & CS Sweaters; Childrens CS Sweaters	Knitting, Cutting & Sewing; Finishing	264	(4) Greystone
11. Northridge	1957	Womens FF Sweaters	Knitting & Finishing	92	
12. Weststone	1959	Womens CS Sweaters	Knitting, CS & Finishing	80	
13. Midland	1961	Womens FF (25%) Childrens CS (35%) Womens CS (40%)	Knitting, CS & Finishing	92	
			Total in Groups	1,254	
E. Others:					
14. Coamo	1962	Womens FF Sweaters	Knitting & Finishing	170	(5) Bobbie Brooks
15. Puritana	1962	Mens Sweaters & Shirts	Knitting, Dyeing, Finishing	434	(6) Puritan
16. Rosita	1962	Mens FF Shirts	Knitting & Finishing	232	(7) Colfax
17. Sigo	1961	Womens FF Sweaters (60%) Mens FF Shirts (40%)	Knitting & Finishing	78	(8) Goodline

The Sweater & Knit Swimwear Industry  
in Puerto Rico on August 15, 1965  
(Continued)

<u>NAME OF Company</u>	<u>Year Established</u>	<u>Principal Product</u>	<u>Operations Performed</u>	<u>Number of Covered Employees</u>	<u>Mainland Affiliate</u>
18. Textile Dye	1955		Dyeing	40	None
		[Dyes for Finetex and Northridge Groups; Occasional Dyeing for Glamourette & Gordonshire Groups; Coamo; Rosita; Sigo and Yauco]			
19. Yauco Super	1960	Mens, Women's & Children's ] FF Sweaters (85%) ] Mens, Womens & Childrens ] CS Sweaters (15%) ]	Knitting & Finishing	<u>180</u>	None
Total Non-Group				<u>1,134</u>	
Total all Companies				<u>2,388</u>	

186

Source: Data Pertinent to Review of Minimum Wage Rates;  
Wage & Hour Division, U.S. Department of Labor

Note: \*FF = Full Fashioned  
\*CS = Cut & Sewn

Selected Minimum Wage Rates in Puerto Rico  
Under the Fair Labor Standards Act

<u>Industry and Classification</u>	<u>Hourly Rate</u>	<u>Effective Date</u>
Sweater & Knit Swimwear		
General Classification	1.17	Nov. 3, 1963
Children's Dress & Related Products		
Hand-Embroidered Classification	.80	Jan. 24, 1965
Other Operations "	1.01-1/2	Jan. 24, 1965
Corsets, Brassieres & Allied Garments		
General Classification	1.12-1/2	Jan. 24, 1965
Hosiery		
Ladies' Hosiery Classification	.86-1/2	Dec. 10, 1964
Other " "	.84	Dec. 10, 1964
Needlework & Fabricated Textile Products		
Knit Gloves Classification	1.01	Jan. 21, 1965
Crocheted Slippers Classification	.97-1/2	Jan. 21, 1965
Hand Crocheting "	.77-1/2	Jan. 21, 1965
Other Operations "	1.05	Jan. 21, 1965
Slacks & Related Products Classification	1.11	Jan. 21, 1965
General Classification	1.11	Jan. 21, 1965
Textile & Textile Products		
Bag Cleaning Classification	.85	Dec. 10, 1964
Broad Woven Fabrics Classification	.95	Dec. 10, 1964
Hooked Rug Classification		
Multiple Needle-Power Classification	1.02	Dec. 10, 1964
Other Operations Classification	.78	
Mattress and Pillow "	1.25	Nov. 3, 1963
Yarn "	.95	Dec. 10, 1964
General "	.92-1/2	Dec. 10, 1964
Women's and Children's Underwear and		
Women's Blouses:		
Hand Sewing Classification	.85	Jan. 1, 1965
Other Operations "	1.00	

Source: U.S. Dept. of Labor, Wage & Hour Division

<b>AVERAGE STRAIGHT TIME-Hourly Earnings</b>	<b>February, 1965</b>
of all Covered Workers in the	
Sweater and Knit Swimwear	
Industry in Puerto Rico	<b>\$1.27</b>

<b>GROSS AVERAGE-Hourly Earnings of</b>	
Production Workers in the	
fifty states-	
Knit Outerwear (S.I.C.2253)	<b>1.84</b>
Women & Misses Outerwear, NEC(S.I.C.	
2339)	<b>1.71</b>

**SOURCE: WAGE AND HOUR DIVISION  
AND UNITED STATES BUREAU OF LABOR STATISTICS**

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**"The average manufacturing wage last February was  
\$1.23 in Puerto Rico and \$2.59 in the States."**

**SOURCE: Testimony of Mr. David Dubinsky before  
the U.S. Senate Labor Committee in  
July 14, 1965.**

Net Operating Profits as a Percentage of  
Net Sales in the United States Textile Mill  
Products and Apparel & Other Finished  
Products Industries for Selected Periods:  
(5 Quarters '62-'63; 5 Quarters '64-'65)

	<u>Textile Mill Products:</u>			<u>(\$000,000's)</u>						
	<u>2nd Qtr. 1962</u>	<u>3rd Qtr. 1962</u>	<u>4th Qtr. 1962</u>	<u>1st Qtr. 1963</u>	<u>2nd Qtr. 1963</u>	<u>2nd Qtr. 1964</u>	<u>3rd Qtr. 1964</u>	<u>4th Qtr. 1964</u>	<u>1st Qtr. 1965</u>	<u>2nd Qtr. 1965</u>
Net Sales	3,590	3,641	3,805	3,476	3,714	3,997	4,166	4,326	4,107	4,333
Net Operating Profit	188	185	210	156	187	210	294	290	287	319
As a Percent of Net Sales	5.2	5.1	5.5	4.5	5.0	5.3	7.1	6.7	7.0	7.4
<u>Apparel and Other Finished Products:</u>										
Net Sales	3,726	3,492	3,527	3,155	3,276	3,397	4,016	4,126	3,603	3,955
Net Operating Profit	95	123	118	88	92	113	188	146	123	145
As a Percent of Net Sales	2.9	3.5	3.3	2.8	2.8	3.3	4.7	3.5	3.4	3.7

Source: U.S. Fed.Trade Commission and  
Securities & Exchange Commission;  
Quarterly Financial Reports.

Sales and Operating Profit or  
Loss Data for Firms in the  
Sweater and Knit Swim Wear Industry  
*IN PUERTO RICO*

<u>Company</u>	<u>Net Sales</u>	<u>Operating Profit or Loss</u>	<u>As A Percent of Sales</u>
1. <u>Bonita</u>			
6-30-65	\$ 1,472,305.	\$ (138,475)	(09.4)
6-30-64	1,763,365	( 66,644)	( 3.8)
6-30-63	2,025,649	103,238	5.0
6-30-62	2,014,898	53,225	2.6
2. <u>Gordonshire (Sweater Division)</u>			
6-30-65	5,408,489	(399,466)	( 7.3)
6-30-64	3,732,359	(233,975)	( 6.2)
6-30-63	4,910,012	(608,861)	(12.4)
6-30-62	6,593,516	( 35,469)	( 0.5)
3. <u>Finrico</u>			
6-30-65	551,865	57,806	10.5
6-30-64	405,555	( 6,757)	( 1.7)
6-30-63	573,463	57,470	10.0
6-30-62	382,899	1,016	0.2
4. <u>Tinto</u>			
6-30-65	360,526	92,090	25.4
6-30-64	236,570	( 14,427)	( 6.0)
6-30-63	163,771	( 18,129)	(11.0)
6-30-62	159,335	71	0.0
5. <u>Malcolm</u>			
6-30-65	447,929	( 56,651)	(12.7)
6-30-64	523,767	( 22,873)	( 4.3)
6-30-63	332,684	( 29,925)	( 9.0)
6. <u>Northridge</u>			
12-31-64	654,762	864	0.1
12-31-63	1,460,196	212,665	14.5
12-31-62	1,558,841	301,060	19.3
7. <u>Weststone</u>			
12-31-64	772,884	62,339	8.0
12-31-63	863,829	94,558	10.9
12-31-62	834,230	83,900	10.0

Sales and Operating Profit or  
Loss Data for Firms in the  
Sweater and Knit Swim Wear Industry

	<u>Company</u>	<u>Net Sales</u>	<u>Operating Profit or Loss</u>	<u>As a Percent of Sales</u>
8.	<u>Midland</u>			
	12-31-64	\$ 1,499,487	\$ 186,298	12.4
	12-31-63	1,235,905	155,578	12.5
	12-31-62	592,353	48,708	8.2
9.	<u>Finetex</u>			
	12-31-64	564,589	57,490	10.1
	12-31-63	502,959	46,231	9.1
	12-31-62	988,267	162,560	16.4
10.	<u>Gurabo</u>			
	12-31-64	386,356	33,353	8.6
	12-31-63	204,957	( 36,587)	(17.8)
11.	<u>Glamourette</u>			
	1-2-65	1,210,990	( 10,205)	( 0.8)
	12-28-63	1,134,802	10,719	0.09
	12-29-62	1,345,554	153,779	11.4
12.	<u>Wendy</u>			
	1-2-65	44,438	7,363	16.6
	12-28-63	63,324	18,666	29.4
	12-29-62	92,729	7,566	8.1
13.	<u>Messana</u>			
	1-2-65	102,696	14,645	14.2
	12-28-63	59,529	6,103	10.2
14.	<u>Puritana</u>			
	12-31-64	2,707,978	263,408	9.7
	12-31-63	2,137,881	121,767	5.6
	12-31-62	2,243,947	216,988	9.6
15.	<u>Rosita</u>			
	12-31-64	1,086,841	943	0.08
	12-31-63	734,993	24,983	3.3
	12-31-62	564,500	114,948	20.3
16.	<u>Sigo</u>			
	12-31-64	421,413	23,624	5.6
	12-31-63	415,576	15,968	3.8
	12-31-62	421,948	( 8,983)	( 2.1)

Sales and Operating Profit or  
Loss Data for Firms in the  
Sweater and Knit Swim Wear Industry

<u>Company</u>	<u>Net Sales</u>	<u>Operating Profit or Loss</u>	<u>As a Percent of Sales</u>
17. <u>Yauco</u>			
12-31-64	\$ 1,133,298	\$ 36,020	3.1
12-31-63	872,273	27,072	3.1
12-31-62	675,858	27,651	4.0
18. <u>Textile Dye</u>			
12-31-64	420,023	74,895	17.8
12-31-63	438,567	76,004	17.3
12-31-62	473,703	105,342	22.2

Source: Audited Financial Statements Submitted by  
Firms to Wage and Hour Divisions,  
United States Department of Labor

The Sweater & Knit Swimwear  
Industry in Puerto Rico

Summary of Sales and Operating  
Profit or Loss of "AFFILIATED  
GROUPS"

<u>Year Ended</u>	<u>Number of Companies</u>	<u>Sales</u>	<u>Operating Profit</u>	<u>As a % of Sales</u>
<b>1. <u>Gordonshire Group:</u></b>				
6-30-65	5	\$ 8,241,114	\$ (444,696)	( 5.4)
6-30-64	5	6,661,616	(344,676)	( 5.1)
6-30-63	5	8,005,579	(496,207)	( 6.1)
6-30-62	4	9,150,648	18,843	0.2
6-30-61	4	9,071,132	506,071	5.5
<b>2. <u>Northridge Group:</u></b>				
12-31-64	3	2,927,133	249,501	8.5
12-31-63	3	3,559,930	462,801	13.0
12-31-62	3	2,985,424	433,668	14.5
12-31-61	3	2,391,038	269,767	11.2
<b>3. <u>Finetex Group:</u></b>				
12-31-64	2	950,945	90,843	9.5
12-31-63	2	707,916	9,644	1.2
12-31-62	1	988,267	162,560	16.4
12-31-61	1	1,134,459	197,509	17.4
<b>4. <u>Glamourette Group:</u></b>				
1-2-65	3	1,358,124	11,803	0.8
12-28-63	3	1,257,655	35,488	2.8
12-29-62	2	1,438,283	61,345	11.2
12-31-61	1	1,265,791	51,207	11.8

The Sweater & Knit Swimwear  
Industry in Puerto Rico

Summary of Sales & Operating  
Profit or Loss of Industry  
(Most Current Financial Statements)

A. "AFFILIATED GROUP" COs.

<u>YEAR</u>	<u>Number of Companies</u>	<u>Sales</u>	<u>Operating Profit</u>	<u>As a % of Sales</u>
1964	13	\$ 13,477,316	\$ (92,352)	(0.6)
1963	13	12,187,117	163,257	1.3
1962	10	13,417,553	261,366	1.9
1961	9	13,941,936	637,326	4.5

B. NON-AFFILIATED COs.

1964	5	5,769,553	398,890	6.9
1963	5	4,599,290	265,794	5.7
1962	5	4,379,956	455,946	10.4
1961	3	1,122,552	137,399	12.2

C. TOTAL COMPANIES SUBMITTING AUDITED STATEMENTS

1964	19,246,869	306,341	1.5
1963	16,786,407	429,051	2.5
1962	17,797,509	717,312	4.0
1961	15,064,488	774,725	5.1

Source: Audited Statements of  
Companies submitted to  
Wage & Hour Division

The Sweater & Knit Swimwear  
Industry in Puerto Rico

Sales & Operating Profit or  
Loss by Principal Product or  
Service: (18 of 19 Companies  
in Industry).

TOTALS FOR 18 COMPANIES:

	<u>Sales</u>	<u>Operating Profit</u>	<u>As a % of Sales</u>
	\$ <u>19,246,869</u>	\$ <u>306,341</u>	<u>1.5</u>
<u>Full Fashioned Sweaters: (% of All Sales = 51.3)</u>			
1. Malcolm	\$ 447,929	\$ ( 56,651)	(12.7)
2. Northridge	654,762	864	0.1
3. Sigo	421,413	23,624	5.6
4. Yauco (85%)	1,133,298	36,020	3.1
5. Glamourette	1,210,990	(10,205)	(0.8)
6. Finetex	564,589	57,490	10.1
7. Gordonshire	5,408,489	(399,466)	(7.3)
8. Wendy	44,438	7,363	16.6
	\$ <u>9,885,908</u>	\$ <u>340,961</u>	<u>(3.4)</u>
<u>Cut &amp; Sewn Sweaters: (% of All Sales = 13.8)</u>			
9. Gurabo	\$ 386,356	\$ 33,353	8.6
10. Weststone	772,884	62,339	8.0
11. Midland	<u>1,499,487</u>	<u>186,298</u>	<u>12.4</u>
	\$ <u>2,658,727</u>	\$ <u>281,990</u>	<u>10.6</u>
<u>Dyeing &amp; Finishing: (% of All Sales = 7.4)</u>			
12. Messana	\$ 102,696	\$ 14,645	14.2
13. Finrico	551,865	57,806	10.5
14. Tinto	360,526	92,090	25.4
15. Textile Dye	<u>420,023</u>	<u>74,895</u>	<u>17.8</u>
	\$ <u>1,435,110</u>	\$ <u>239,436</u>	<u>16.6</u>
<u>Swimwear: (% of All Sales = 7.6)</u>			
16. Bonita	\$ <u>1,472,305</u>	\$ (138,475)	(9.4)
	\$ <u>1,472,305</u>	\$ (138,475)	(9.4)
<u>Mens' Shirts: (% of All Sales = 19.6)</u>			
17. Rosita	\$ 1,086,841	\$ 943	0.08
18. Puritana	<u>2,707,978</u>	<u>263,408</u>	<u>9.7</u>
	\$ <u>3,794,819</u>	\$ <u>264,351</u>	<u>6.9</u>

Source: Audited Statements by Companies.

## The Sweater &amp; Knit Swimwear Industry in Puerto Rico

Sales & Operating Profit & Loss Data for Fifteen  
Companies Reporting for Three Consecutive Years

	<u>1962</u>	<u>Operating</u>	<u>1963</u>	<u>Operating</u>	<u>1964</u>	<u>Operating</u>
	<u>Sales</u>	<u>Profit or</u>	<u>Sales</u>	<u>Profit or</u>	<u>Sales</u>	<u>Profit or</u>
		<u>Loss</u>		<u>Loss</u>		<u>Loss</u>
Bonita	\$ 2,025,649	\$ 103,238	\$ 1,763,365	\$ ( 66,644)	\$ 1,472,305	\$ (138,475)
Gordonshire	4,910,012	(608,861)	3,732,359	(233,975)	5,408,489	(399,466)
Finrico	573,463	57,470	405,555	( 6,757)	551,865	57,806
Tinto	163,771	( 18,129)	236,570	( 14,427)	360,526	92,090
Northridge	1,558,841	301,060	1,460,196	212,665	654,762	864
Weststone	834,230	83,900	863,829	94,558	772,884	62,339
Midland	592,353	48,708	1,235,905	155,578	1,499,487	186,298
Finetex	988,267	162,560	502,959	46,231	564,589	57,490
Sigo	421,948	( 8,983)	415,576	15,968	421,413	23,624
Glamourette	1,345,554	153,779	1,134,802	10,719	1,210,990	( 10,205)
Wendy	92,729	7,566	63,324	18,666	44,438	7,365
Puritana	2,243,947	216,988	2,137,881	121,767	2,707,978	263,408
Rosita	564,500	114,948	734,993	24,983	1,086,841	943
Yauco	675,858	27,651	872,273	27,072	1,133,298	36,020
Textile Dye	<u>473,703</u>	<u>105,342</u>	<u>438,567</u>	<u>76,004</u>	<u>420,023</u>	<u>74,895</u>
	\$17,464,825	\$ 747,237	\$15,998,154	\$ 482,408	\$17,709,888	\$ 314,996
Operating Profit as % of Sales		4.2%		3.0%		1.7%

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Source: Audited Financial Statements  
Submitted to Wage & Hour  
Division

The Sweater & Knit Swimwear Industry in Puerto Rico  
 Distribution of Operating Profit as a % of Net Sales

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<u>Profit or Loss</u>	<u>Number of Companies</u>		
	<u>1962</u>	<u>1963</u>	<u>1964</u>
<u>Losses</u>			
-10% or Greater	2	1	1
- 5% to 9.9%	1	2	2
- 1% to 4.9%	1	3	0
- 0% to 1%			1
<u>Profits</u>			
+ to 1%	0	1	2
+1.1% to 4.9%	1	2	1
+ 5% to 9.9%	4	3	4
+10% or Greater	<u>7</u>	<u>6</u>	<u>7</u>
Total Number of Companies	16	18	18
Average Profit as a Percent of Sales for Total Companies	3.4%	2.5%	1.6%

Source: Most Recent Audited Statements  
 of Companies

Sales and Operating Profit or Loss Data For  
Partial Years for Firms in the Sweater and  
Knit Swimwear Industry in Puerto Rico

	<u>Sales</u> (000's)	<u>Operating</u> <u>Profit</u> (000's)	<u>%</u> <u>of Sales</u>
1. <u>Northridge:</u>			
1/1/65 to 6/30/65	277	(26)	(9.7)
1/1/64 to 8/31/64	380	(100)	(26.3)
1/1/63 to 8/31/63	1,119	161	14.4
2. <u>Weststone:</u>			
1/1/65 to 6/30/65	413	52	12.5
1/1/64 to 8/31/64	611	22	3.6
1/1/63 to 8/31/63	553	47	8.5
3. <u>Midland:</u>			
1/1/65 to 6/30/65	460	11	2.3
1/1/64 to 8/31/64	1,106	146	13.2
1/1/63 to 8/31/63	634	(9)	1.5
4. <u>Finetex:</u>			
1/1/65 to 6/30/65	148	(27)	(18.2)
1/1/64 to 7/31/64	335	39	11.3
1/1/63 to 6/30/63	119	(28)	(23.5)
5. <u>Gurabo:</u>			
1/1/65 to 6/30/65	167	11	6.5
1/1/64 to 7/31/64	254	20	7.8
1/1/63 to 6/30/63	107	(11)	(10.2)
6. <u>Sigo:</u>			
1/1/65 to 7/31/65	164	(10)	6.0
1/1/64 to 6/30/64	208	12	5.7
1/1/63 to 5/31/63	184	(5)	(7.8)
7. <u>Glamourette:</u>			
1/3/65 to 7/6/65	633	43	6.7
12/28/63 to 8/29/64	585	(54)	(9.5)
12/30/62 to 8/24/63	700	(27)	(3.8)

Sales and Operating Profit or Loss Data For  
Partial Years for Firms in the Sweater and  
Knit Swimwear Industry in Puerto Rico  
(Continued)

	<u>Sales</u> <u>(000's)</u>	<u>Operating</u> <u>Profit</u> <u>(000's)</u>	<u>%</u> <u>of Sales</u>
8. <u>Wendy:</u>			
1/3/65 to 7/6/65	39	13	33.3
12/28/63 to 8/29/64	27	4	14.8
12/29/62 to 8/24/63	52	23	44.2
9. <u>Messana:</u>			
1/3/65 to 7/6/65	65	11	16.9
12/28/63 to 8/29/64	31	5	9.8
12/29/62 to 8/24/63	34	1	2.9
10. <u>Puritana:</u>			
1/1/65 to 6/30/65	1,513	195	13.5
1/1/64 to 6/27/64	999	10	1.0
1/1/63 to 3/31/63	422	47	11.1
11. <u>Rosita:</u>			
1/1/65 to 6/30/65	743	71	9.5
1/1/64 to 8/31/64	548	12	2.3
12. <u>Yauco:</u>			
1/1/65 to 6/30/65	674	15	1.6
1/1/64 to 5/31/64	361	41	11.3
1/1/63 to 5/31/63	253	4	1.5
13. <u>Textile Dye:</u>			
1/1/65 to 6/30/65	206	23	11.1
1/1/64 to 5/31/64	206	43	20.8
1/1/63 to 3/31/63	64	1	1.5

Source: Financial Statements Submitted by  
Firms to Wage & Hour Division.

HASKINS & SELLS  
CERTIFIED PUBLIC ACCOUNTANTS

FIRST NATIONAL CITY BANK BUILDING  
(SANTURCE)  
SAN JUAN, PUERTO RICO 00904

ACCOUNTANTS' OPINION

Glamourette Fashion Mills, Inc.:

We have examined the balance sheet of Glamourette Fashion Mills, Inc. as of January 2, 1965 (Exhibit A) and the related statement of income and retained earnings for the fifty-three weeks then ended (Exhibit B) and the supplemental schedule of cost of products sold (Schedule 1). Our examination was made in accordance with generally accepted auditing standards, and accordingly included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances.

In our opinion, the accompanying financial statements present fairly the financial position of the Company at January 2, 1965 and the results of its operations for the fifty-three weeks then ended, in conformity with generally accepted accounting principles applied on a basis consistent with that of the preceding period, and the accompanying supplemental schedule, when considered in relation to the basic financial statements, present fairly in all material respects the information it purports to show.

*Haskins + Sells*

February 12, 1965

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## EXHIBIT B

GLAMOURETTE FASHION MILLS, INC.

STATEMENT OF INCOME AND RETAINED EARNINGS  
 FOR THE FIFTY-THREE WEEKS ENDED JANUARY 2, 1965 AND  
 THE FIFTY-TWO WEEKS ENDED DECEMBER 28, 1963

	FIFTY-THREE WEEKS ENDED JANUARY 2, 1965	FIFTY-TWO WEEKS ENDED DECEMBER 28, 1963
SALES - NET:		
Affiliated companies.....	\$1,206,143.00	
Other.....	4,847.01	
Total.....	1,210,990.01	\$1,134,802.20
COST OF PRODUCTS SOLD.....	1,164,250.58	1,116,344.94
GROSS MARGIN.....	46,739.43	18,457.26
SELLING EXPENSES.....	3,300.00	3,101.64
PROFIT FROM OPERATIONS.....	43,439.43	15,355.62
OTHER CREDITS - Miscellaneous income.	6,476.46	92.32
Total.....	49,915.89	15,447.94
OTHER CHARGES - Interest expense.....	2,520.87	4,728.68
NET INCOME BEFORE SPECIAL ITEM.....	47,395.02	10,719.26
SPECIAL ITEM - Price adjustment for prior years sales (Note 2).....	(57,600.17)	
NET INCOME (LOSS).....	(10,205.15)	10,719.26
RETAINED EARNINGS AT BEGINNING OF PERIOD.....	432,399.59	421,680.33
RETAINED EARNINGS AT END OF PERIOD...	\$ 422,194.44	\$ 432,399.59

See Notes to Financial Statements.

GLAMOURETTE FASHION MILLS, INC.NOTES TO FINANCIAL STATEMENTS  
JANUARY 2, 19651. AFFILIATED COMPANIES ACCOUNTS:

As of January 2, 1965 the Company had the following balances with affiliated companies:

## Receivables:

Manchester Hosiery Mills, Inc.	\$960,006.31
Abelena Textile Mills, Inc.....	<u>100.00</u>
Total.....	<u>\$960,106.31</u>

## Payables:

Puerto Rico Hosiery Mills, Inc.	\$239,298.22
Wendy Textile Mills, Inc.....	39,706.32
Mesana Dyeing and Finishing, Inc.....	36,707.46
Tennessee Knitting Mills, Inc.	<u>15,296.62</u>
Total.....	<u>\$331,008.62</u>

## Loan payable - Puerto Rico

Hosiery Mills, Inc.....	<u>\$ 75,000.00</u>
-------------------------	---------------------

2. SPECIAL ITEM:

In July 1964 the Company granted a price adjustment of \$57,600.17 on sales of defective merchandise made to an affiliated Company in prior years.

3. TAX EXEMPTION:

Under the provisions of Puerto Rico's Act No. 6 of December 15, 1953, as amended, the Company has been granted tax exemption with respect to the income derived from its manufacturing operations for a period of ten years from the date of commencement of operations, April 1, 1956. This exemption also covers the municipal license fee.

**EXHIBIT 14**

[Received Nov. 8, 1965, U.S. Dept. of Labor, Office  
of the Solicitor, San Juan, P.R.]

**KELBERG & DORFF**  
Counselors At Law

485 Fifth Avenue  
New York, N.Y.  
November 4th, 1965

U.S. Department of Labor  
Office of the Solicitor  
P.O. Box 9092  
Santurce, Puerto Rico 00908

Attention: David E. Blum, Esq.  
Committee Counsel

Re: Our File No. 3282-E  
Sweater & Knit Swimwear Hearing

Dear Mr. Blum:

We acknowledge receipt this day of Mr. Myers' letter, dated November 3, 1965 and your letter, dated November 2d, 1965.

a) The note referred to on the 1965 Income Statement of Tinto, Inc., appears on the Balance Sheet (as stated);

b) Schedules B-1 for 1964 for Finetex and Gurabo were inadvertently omitted in the process of printing and forwarding. We enclose both the schedules herewith;

c) Arthur Anderson & Company have submitted the enclosed information as to the allocation of Profit and Loss and Expenses between the Gordonshire divisions.

The other objections in your letter have been considered time and again by these Committees, with the advice of the Labor Department's Solicitor's office, and in every instance, (except for the 1962 and 1963 Glamourette group statements) the objections have been overruled and the statements admitted.

Mr. Cooper and I will be available outside the Commit-

tee room when the executive session convenes on November 8, 1965. If you feel it will expedite the consideration of this matter, we shall, of course, be pleased to make ourselves available to the Committee for a discussion of the contents of our pre-hearing statement in order that the hearing itself may be expedited.

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## EXHIBIT 15

## The Sweater and Knit Swimwear Industry in Puerto Rico

Selected Characteristics of Firms in the Gordonshire Group  
November 1965

Characteristic	Malcolm Knitting Mills, Inc. Cayey		
Year established	1962		
Principal related companies	Gordonshire Group		
Principal product	Cut and sewn sweaters.		
Materials used and source	Yarn, thread, wool fabric, findings and plastic bags from the mainland.		
Operations performed	Cutting of wool fabric by hand-operated cutter, machine sewing, inspecting, pressing, examining, packing and shipping.		
Disposition of products and method of shipment	Entire output sold to MKM Knitting Mills, Inc., Manchester, N. H.		
Employment and (average hourly earnings)	August 1964	39	(\$1.23)
	August 1965	73	(\$1.20)
Seasonality:			
Peak	May - September (80-85 employees)		
Slack	October - April (3 or 4)		
Union	No		
Tax exemption	Yes		
Remarks	Piece rates in all departments. Firm produces 10 to 25 styles depending on season. Prices: not available. On occasion the firm does finishing of full-fashioned sweaters for affiliate, Finrico, Inc., on a commission basis. Inactive February and March 1965 - resumed operations in April 1965 with about 25 workers.		

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EXHIBIT 15 (id) (Rec)

## The Sweater and Knit Swimwear Industry in Puerto Rico

Table 3 (Revised). Shipments of Sweaters of Wool and Man-made Fiber, except Rayon or Acetate, from Puerto Rico to Other Parts of the United States, by Months, 1963 through June 1965

Month	1963	1964	1965
<u>Quantity (Thousand dozens)</u>			
January	11	20	10
February	24	20	16
March	24	14	24
April	33	16	27 1/2
May	39	50	36 1/2
June	47	43	49 1/2
July	44	50	
August	41	57	
September	28	32	
October	45	29	
November	40	31	
December	16	24	
<u>Value (Thousand dollars)</u>			
January	\$ 449	\$ 613	\$ 591
February	709	935	886
March	812	631	1,417
April	952	842	1,808 1/2
May	1,871	1,047	2,592 1/2
June	2,730	1,346	3,922 1/2
July	1,743	1,644	
August	1,851	1,314	
September	1,666	1,494	
October	2,331	1,375	
November	2,082	1,851	
December	921	1,436	

1/ Revised.

Source: U.S. Bureau of the Census, Report No. FT800, United States Trade with Puerto Rico and with United States Possessions.

UNITED STATES GOVERNMENT

*Memorandum*

U.S. DEPARTMENT OF COMMERCE  
BUREAU OF THE CENSUS

3

TO : Mr. Warren D. Landis, Director  
Division of Wage Determination  
Wage and Hour Division  
U.S. Department of Labor

FROM : Dino S. Villa, Chief *DSV*  
Foreign Trade Division

DATE: NOV 5 1965

In reply refer to:

SUBJECT: Revisions to Puerto Rican Sweater Statistics

In confirmation of your telephone conversation on November 4, 1965 with Mr. Daniel W. Raaf of this office, we are enclosing revised data for the April, May, and June 1965 shipments of sweaters from Puerto Rico to the United States. These revisions will be announced in a Special Notice in the August issue of Report FT 800. In addition, these corrections will also be reflected in the "Revisions to Previous Months' Reports" section of the December 1965 issue of Report FT 800.

Enclosure

Revisions to Statistics Covering the April, May  
and June 1965 Shipments of Sweaters from  
Puerto Rico to the United States

Schedule P No. 84103 (Men's and boys' sweaters)

April 1965

	<u>Net Quantity</u>	<u>Value</u>	<u>Ship. Wgt.</u>
Originally reported:	6,344	278,115	39,177
Corrected to :	6,870	321,957	44,396

May 1965

Originally reported:	7,631	380,174	59,200
No change			

June 1965

Originally reported:	4,975	242,679	39,102
Corrected to:	5,285	258,179	41,187

Schedule P No. 84137 (Women's and Misses Sweaters)

April 1965

Originally reported:	39,172	1,530,314	155,766
Corrected to:	19,458 1/	1,470,810	146,961

May 1965

Originally reported:	105,673	2,176,629	220,955
Corrected to:	28,437	2,203,849	216,492

June 1965

Originally reported:	42,580	3,514,270	400,563
Corrected to:	41,075	3,526,315	396,106

1/ Re-verification indicates possible reduction in quantity by up to 5 per

Schedule P No. 84147 (Girls', Children's and Infants' Sweaters)

April 1965

Originally reported:	329	15,470	3,033
No change			

May 1965

Originally reported:	162	8,061	680
No change			

June 1965

Originally reported:	2,752	137,465	11,693
No change			

Shipments of Sweaters From Puerto Rico to Other Parts of the  
United States, by Type, First 8 Months, 1965

[Quantity-Dozens]

Year and month	84103 Men's and boys'	84137 Women's and misses'	84147 Girls' children's and infants'	All sweaters
1965	48,272	208,031	8,713	265,016
January	5,030	6,989	-	10,019
February	7,123	8,818	-	15,941
March	5,842	17,730	538	24,110
April	6,870 1/	19,458 1/	329	26,657 1/
May	7,631	28,437 1/	162	36,230 1/
June	5,285 1/	41,075 1/	2,752	49,112 1/
July	4,911 2/	42,237 2/	3,133 2/	51,281 2/
August	7,580 2/	42,287 2/	1,799 2/	51,666 2/

[Value-Dollars]

1965	\$2,280,148	\$14,902,295	\$426,028	\$17,608,471
January	159,259	431,845	-	591,104
February	330,159	555,755	-	885,914
March	276,412	1,121,045	19,507	1,416,964
April	321,957 1/	1,470,810 1/	15,470	1,808,237 1/
May	380,174	2,203,849 1/	8,061	2,592,084 1/
June	258,179 1/	3,526,315 1/	137,465	3,921,959 1/
July	231,092 2/	2,736,867 2/	155,950 2/	3,123,909 2/
August	322,916 2/	2,855,809 2/	89,575 2/	3,268,300 2/

1/ Revised.

2/ Preliminary.

Source: U.S. Bureau of the Census, U.S. Trade With Puerto Rico and  
With U.S. Possessions, FT-800.

Shipments of Swimwear from Puerto Rico  
to Other Parts of the United States, First 8 Months, 1965

: 84105 :	84139 :	84149 :	:
: Men's :	Women's :	Girls' :	:
: and :	and :	children's :	Total
: boys' :	misses' :	and :	:
:	:	infants' :	:

[Quantity-Dozens]

1965	501	7,582	2,356	10,439
January	338	2,481	300	3,119
February	163	677	-	840
March	-	1,538	-	1,538
April	-	1,430	-	1,430
May	-	777	1,581	2,358
June	-	247	277	524
July	-	235	-	235
August	-	197	198	395

[Value-Dollars]

1965	\$56,540	\$922,576	\$32,910	\$1,012,026
January	36,890	309,250	5,000	351,140
February	19,650	83,877	-	103,527
March	-	185,150	-	185,150
April	-	170,795	-	170,795
May	-	92,544	24,530	117,074
June	-	29,770	2,390	32,160
July	-	27,320	-	27,320
August	-	23,870	990	24,860

Source: U. S. Bureau of the Census, FT-800, U. S. Trade  
with Puerto Rico and with United States Possessions.

6.

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Shipments of Knit Sport Shirts from Puerto Rico  
to the United States, First 8 Months, 1965

:	84113	:	84125	:	
:	Men's	:	Women's	:	
:	and	:	girls'	:	Total
:	boys'	:	and	:	
:		:	infants'	:	

[Quantity-Dozens]

Total, 8 months	12,342 1/	29,516	41,858
January	NA	6,262	6,262
February	NA	2,536	2,536
March	NA	1,425	1,425
April	-	2,298	2,298
May	-	1,898	1,898
June	60	2,267	2,327
July	1,635	3,758	5,393
August	10,647	9,072	19,719

[Value-Dollars]

Total, 8 months	\$145,133 1/	\$174,330	\$319,463
January	NA	31,700	31,700
February	NA	16,100	16,100
March	NA	5,900	5,900
April	-	21,990	21,990
May	-	10,281	10,281
June	847	12,990	13,837
July	42,886	22,535	65,421
August	101,400	52,834	154,234

1/ Shipments of men's and boys' knit sport shirts were not reported separately January to March, 1965.

Source: U. S. Bureau of the Census, FT-800, U. S. Trade with Puerto Rico and United States Possessions.

The Sweater and Knit Swimwear Industry in Puerto Rico

Table 9 (Second Revision). Number of Covered Workers, Including Learners,  
For Selected Dates, 1959-1965

Month and date	1959	1960	1961	1962	1963	1964	1965
February							
1	2,128			2,392		2,118 <u>1/</u>	
15					2,122	2,160	2,204
March							
18					2,346		
May							
1	2,473	2,164	2,464	2,594		2,048	2,111 <u>1/</u>
15					2,371	2,039	2,404 <u>1/</u>
June							
18			2,413	2,668	2,276		
August							
1	2,662		2,432	2,625	2,294	2,175	
15					2,294	2,171 <u>1/</u>	2,344 <u>1/</u>
September							
18				2,662			
November							
1	2,571		2,473		2,160		
15					2,030	2,236	
December							
18				2,763			

1/ Revised.

Source: Surveys conducted by the Wage and Hour Division.

## The Sweater and Knit Swimwear Industry in Puerto Rico

Table 10A (Revised). Number of Covered Workers, Including Learners, by Group and Firm, May and August 1965

Group and firm	: The 15th of the month:	
	: May : 1965	: Aug. : 1965
<u>All groups</u>	<u>2,424 1/</u>	<u>2,344 1/</u>
<u>The Finetex Group</u>	<u>100</u>	<u>97</u>
Finetex, Inc.	58	63
Gurabo Knitting Mills, Inc.	42	34
<u>The Glamourette Group</u>	<u>201</u>	<u>216</u>
Glamourette Fashion Mills, Inc.	159	174
Mesana Dyeing and Finishing, Inc.	26	27
Wendy Textile Mills, Inc.	16	15
<u>The Gordonshire Group</u>	<u>736 1/</u>	<u>633 1/</u>
Bonita, Inc.	89 1/	4 1/
Finrico Co.	122	111
Gordonshire Knitting Mills, Inc.	407 1/	417
Malcolm Knitting Mills, Inc.	43	73
Tinto, Inc.	26	28
<u>The Northridge Group</u>	<u>282</u>	<u>264</u>
Midland Knitting Mills, Inc.	114	92
Northridge Knitting Mills, Inc.	91	92
Weststone Knitting Mills, Inc.	77	80
<u>Other firms</u>	<u>1,105</u>	<u>1,134</u>
Coamo Knitting Mills, Inc.	147	170
Knitco (P.R.), Inc.	-	-
Puritana Mfg. Corp.	453	434
Rosita Mills, Inc.	211	232
Sigo Corp.	77	78
Textile Dye Works, Inc.	39	40
Yauco Super Knits, Ltd.	178	180

1/ Revised.

Source: Surveys conducted by the Wage and Hour Division.

**EXHIBIT 17**

[1]

P.O. Box 9092  
Santurce, P. R.  
00908

November 2, 1965

Mr. Paul R. Kelberg  
485 Fifth Avenue  
New York, N.Y. 10017

Dear Mr. Kelberg:

Your submission on behalf of 18 companies in the Sweater and Swimwear Industry in Puerto Rico for the presentation before Industry Committee No. 75 was received yesterday, and we have carefully reviewed its contents.

As you may know, in instances where financial statements make reference to a note, schedule or an exhibit, that note, schedule or exhibit is considered an integral part of the financial statement and should be submitted along with the financial statement in order to meet the requirements of the regulations governing industry committee procedures (29 CFR 511). Further, a schedule detailing cost of goods sold should be submitted with every income statement. Our review indicates that the following have not been included in the data submitted by you:

1. Tinto, Inc. - The note referred to in the 1965 income statement is not included.
2. Finetex, Inc. - None of the schedules referred to in the balance sheets for 1962-64 have been submitted, nor has the exhibit referred to in the 1964 income statement been submitted.
3. Gurabo Knitting Mills, Inc. - Neither the schedule referred to in the balance sheet statement, nor the exhibits referred to in the income statements for 1964 and 1963 have been submitted.
4. Glamourette Fashion Mills, Inc., Wendy Textile Mills, Messana Dyeing & Finishing, Inc. - Notes and schedules for the 1962-1963 comparative statements have not been submitted.

5. Sigo Corp. - The schedules referred to in the 1964 balance sheet statements have not been provided.

6. Textile Dye Works, Inc. - No cost of goods sold schedule is provided with the 1962 statement.

[2] In addition, it is necessary that each financial statement reveal the required financial data for each individual company or corporation or other business unit seeking to participate in the hearings as a party. In view of this, there is data supplementary to the financial statements which should be submitted if the statements are to fully meet the requirements of the regulations.

With respect to the five companies under common control with M K M Knitting Mills, Inc. (Bonita, Inc., Gordonshire Knitting Mills, Inc., Finrico Co., Tinto, Inc. and Malcolm Knitting Mills, Inc.), data should be submitted for each separate company as to the current and non-current receivables between such corporations, at least for the fiscal years ending June 30, 1964 and earlier, since such data should now be available. With respect to Gordonshire Knitting Mills, Inc., the financial statements treat the sweater division of that company and do not deal with the recently terminated hosiery division. Information as to any financial allocations between the two divisions should be submitted.

If you have any questions please do not hesitate to contact this office.

Very truly yours,  
Morton J. Marks  
Regional Attorney  
By: David E. Blum  
Committee Counsel

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# **EXHIBIT 18** **ANNUAL STATISTICAL REPORT OF EDA MANUFACTURING PLANTS** **1963-64 Edition**

Section II-B  
Table 13

PROFITS RELATED TO EQUITY AND TO TOTAL CAPITAL EMPLOYED; BY INDUSTRY AND PROFIT STATUS

(Coverage: All firms with EDA-promoted manufacturing plants, which filed income tax returns for fiscal years ending in 1963)

Industry	Firms reporting		Liabilities and net worth			Total Capital Employed			Average Equity 2/ (\$000)	Net profit (\$000)	Net profit Ave. Equity \$	Net profit Total capi- tal \$
	Profits	Losses	Govt. loans & securities (\$000)	Private claims (\$000)	Equity (\$000)	Total assets (\$000)	Leases 1/ (\$000)	Total (\$000)				
Canned tuna	2	1	51	5,608	12,687	18,346	344	18,690	11,083	2,649	23.9	14.2
Fruit nectars and tomato sauce	4	2	185	5,711	2,991	8,887	459	9,346	2,798	418	14.9	4.5
Other canning and preserving of fruits, vegetables and sea foods	3	1	39	314	488	841	238	1,079	485	28	5.8	2.6
Meat products	2	2	197	934	1,300	2,431	2,377	4,808	1,165	66	5.7	1.4
Prepared feeds for animals and fowls	1	3	626	9,384	1,868	11,878	131	12,009	1,208	1,233	102.1	10.3
Rice milling	3	-	439	8,636	1,317	10,392	-	10,392	1,284	246	19.2	2.4
Bakery products	3	1	-	523	1,317	1,840	454	2,294	1,100	616	56.0	26.9
Confectionery and other food and kindred products	2	4	299	242	1,745	2,286	174	2,460	1,656	220	13.3	8.9
Tobacco manufactures	6	1	-	1,771	33,615	35,386	3,103	38,489	30,412	7,257	23.9	18.9
Yarn and thread mills	2	3	-	955	3,649	4,604	546	5,150	3,161	866	27.4	16.8
Broad, woven and narrow fabric mills	5	1	59	1,248	2,261	3,568	879	4,447	1,804	878	48.7	19.7
Sweater knitting mills	9	3	23	1,215	5,758	6,996	1,033	8,029	5,420	644	11.9	8.0
			-	1,785	4,386	6,171	328	6,499	4,552	-616	-13.5	-9.5
All other knit outerwear mills	3	2	18	2,650	888	3,556	107	3,663	910	93	10.2	2.5
Knit fabric mills	3	2	2	3,764	3,500	7,266	792	8,058	2,952	1,044	35.4	13.0
Other knitting mills	3	2	70	2,592	1,510	4,172	844	5,016	1,122	17	1.5	0.3
Dyeing and finishing textiles	4	1	-	184	651	835	357	1,192	629	99	15.7	8.3
Floor covering mills and other textile goods	2	3	43	280	1,238	1,561	49	1,610	1,193	57	4.8	3.5
Men's and boys' nightwear	4	1	-	265	2,229	2,494	517	3,011	1,942	537	27.7	17.8
Men's and boys' shirts	6	3	216	1,425	2,645	4,286	1,248	5,534	2,142	1,160	54.2	21.0
			101	341	224	666	131	797	238	-77	-32.4	-9.7
Men's, youths' and boys' underwear	3	1	-	857	1,871	2,728	416	3,144	1,446	843	58.3	26.8
Men's and boys' suits and trousers	2	2	-	576	300	876	281	1,157	292	-9	-3.1	-0.8

See footnotes at end of table, page 42

## PAYROLL AND PROFITS RELATED TO SALES, BY INDUSTRY AND PROFIT STATUS

(Coverage: All firms with EDA-promoted manufacturing plants, excluding contractors,<sup>1/</sup> which filed income tax returns for fiscal years ending in 1963)

Industry	Firms reporting		Production workers 2/ payroll (\$000)	Sales (\$000)	Profit (\$000)	Payroll Sales %	Profit Sales %
	Profits	Losses					
Canned tuna	2	1	3,449	31,261	2,649	11.0	8.5
Fruit nectars and tomato sauce	4	2	962	6,992	418	8.0	6.0
Other canning and preserving of fruits, vegetables and sea foods	3	1	183	1,324	28	12.0	1.8
Meat products	2	2	207	5,590	66	3.7	1.2
Prepared feeds for animals and fowls	1	3	910	25,277	1,233	3.6	4.9
Rice milling	3	-	284	27,842	246	1.0	0.9
Bakery products	3	1	279 <sup>2/</sup>	4,155	616	6.7	14.8
Confectionery and other food and kindred products	2	4	323	2,486	220	13.0	8.8
Tobacco manufactures	5	1	7,019	33,417	7,029	21.0	21.0
Yarn and thread mills	2	3	660	8,083	866	8.2	10.7
Broad, woven and narrow fabric mills	5	1	535 <sup>2/</sup>	4,506	878	11.9	19.5
Sweater knitting mills	9	3	3,058	13,532	28	22.6	0.2
All other knit outerwear mills	2	2	801	3,797	93	21.1	2.4
Knit fabric mills	3	2	460	7,969	1,044	5.8	13.1
Other knitting mills	2	2	913	2,870	11	31.8	0.4
Dyeing and finishing textiles	3	1	128	745	98	17.2	13.2
Floor covering mills and other textile goods	2	3	351	1,409	57	27.8	4.0
Men's and boys' nightwear	4	1	1,090	4,932	537	22.1	10.9
Men's and boys' shirts	6	3	1,348	6,810	1,083	19.8	15.9
Men's, youths' and boys' underwear	3	1	944	4,682	843	20.2	18.0
Men's and boys' suits and trousers	2	2	224	853	-9	26.3	-1.1
Work shirts and pants	9	1	1,940	10,841	1,389	18.0	12.8
Women's blouses and shirts	1	2	426	1,376	-66	31.0	-4.8
Women's, misses' and juniors' dresses	4	1	394	984	114	40.0	11.6
Women's skirts	2	2	249	2,209	-29	11.3	-1.3

See footnotes at end of table, page 48

## PAYROLL AND PROFITS RELATED TO SALES; BY INDUSTRY AND PROFIT STATUS

(Coverage: All firms with EDA-promoted manufacturing plants, excluding contractors,<sup>1/</sup> which filed income tax returns for fiscal years ending in 1963)

Industry	Firms reporting		Production workers <sup>2/</sup> payroll (\$000)	Sales (\$000)	Profit (\$000)	Payroll Sales %	Profit Sales %
	Profits	Losses					
Nurses' and maids' uniforms	3	-	476	1,379	48	34.5	3.5
Women's and misses' sportswear	4	4	2,317	12,371	1,182	18.7	9.6
Women's and children's underwear and nightwear	13	7	4,196 <sup>b/</sup>	22,276	2,725	18.8	12.2
Brassieres and accessories	23	2	8,713	30,813	4,034	28.3	13.1
Girdles and corsets	7	1	1,051	5,969	540	17.6	9.0
Hats, caps and millinery	3	-	448	1,632	54	27.5	3.3
Children's and infants' outerwear	7	2	999	3,634	104	27.5	2.9
Dress and work gloves (except knit and all leather)	7	1	1,283	6,013	980	21.3	16.3
Shoulder straps	3	1	693	3,950	169	17.5	4.3
Other apparel findings and related products	3	-	161	651	113	24.7	17.4
Embroideries	4	2	456	960	79	47.5	8.2
Curtains and draperies	1	2	51	217	-10	23.5	-4.6
Housefurnishings, except curtains and draperies	3 <sup>c/</sup>	-	114	548	14	20.8	2.6
Other miscellaneous fabricated textile products	5	2	275	2,119	51	13.0	2.4
Lumber and wood products, except furniture	-	3	75	672	-168	11.2	-25.0
Wood household furniture except upholstered	5	3	478	3,206	60	14.9	1.9
Wood household furniture, upholstered	2	2	297	1,138	-30	26.1	-2.6
Mattresses and bedsprings	4	-	359	2,789	202	12.9	7.2
All other furniture and fixtures	5	1	660 <sup>d/</sup>	3,333	347	19.8	10.4
Converted paper and paperboard products; except containers	6	2	392	7,312	1,164	5.4	15.9
Corrugated and solid fiber boxes	3	2	495 <sup>e/</sup>	3,765	42	13.1	1.1
Other paper and allied products	1	5	876	5,803	-1,021	15.1	-17.6
Commercial printing	2	2	226 <sup>f/</sup>	991	-62	22.8	-6.3
Other printing, publishing and allied industries	3	2	165	679	216	24.3	31.8

See footnotes at end of table, page 48

## PAYROLL AND PROFITS RELATED TO SALES; BY INDUSTRY AND PROFIT STATUS

(Coverage: All firms with EDA-promoted manufacturing plants, excluding contractors,<sup>1/</sup> which filed income tax returns for fiscal years ending in 1963)

Industry	Firms reporting		Production workers 2/ payroll (\$000)	Sales (\$000)	Profit (\$000)	Payroll Sales %	Profit Sales %
	Profits	Losses					
Pharmaceutical preparations	7	-	876	23,415	15,945	3.7	68.1
Industrial chemicals	2	2	1,333	24,899	7,399	5.4	29.7
Soap, detergents and cleaning preparations	1	2	68	417	29	16.3	7.0
Perfumes, cosmetics and other toilet preparations	2	2	115	1,860	638	6.2	34.3
Paints, varnishes, lacquers, enamels and allied products	2	1	68	950	97	7.2	10.2
Other chemicals and allied products	4	3	105 <sup>3/</sup>	1,567	229	6.7	14.6
Petroleum refining and related industries	4 <sup>c/</sup>	1	3,363	131,179 <sup>d/</sup>	12,856	2.6	9.8
Rubber footwear	4	2	1,733	7,795	671	22.2	8.6
Other rubber products	5	2	352	2,984	721	11.8	24.2
Footwear (except rubber)	12	5	4,488	17,366 <sup>d/</sup>	1,830	25.9	10.6
Leather billfolds, wallets and portfolios	12	1	2,340 <sup>e/</sup>	12,265	1,347	19.1	11.0
Leather tanning and finishing	6	-	806	6,767	231	12.0	3.4
Other leather goods (including belts and gloves)	3	4	888	3,552	-75	25.0	-2.1
Plastic toys, plastic jewelry and novelties	4	1	373	1,214	74	30.7	6.1
Plastic flowers, fruits and foliage	2	3	308	1,068	73	28.8	6.8
Phonograph records	3	-	55	414	28	13.3	6.8
Miscellaneous fabricated plastic products	20	10	2,619 <sup>e/</sup>	18,181	5,257	14.4	28.9
Terrazzo, marble and cement tiles	7	4	762	2,777	247	27.4	8.9
Concrete blocks and other concrete and gypsum products	1	5	296	1,554	74	16.5	4.8
Other stone, clay and glass products	7 <sup>f/</sup>	5	3,900	32,392	3,115	12.0	9.6
Aluminum extrusion, coating and insulating of wire	2	2	534	5,869	35	9.1	0.6
Other primary metal industries	2	3	847 <sup>g/</sup>	5,314	404	15.9	7.6
Metal cans	2	2	981	12,235	794	8.0	6.5

See footnotes at end of table, page 48

## PAYROLL AND PROFITS RELATED TO SALES, BY INDUSTRY AND PROFIT STATUS

(Coverage: All firms with EDA-promoted manufacturing plants, excluding contractors,<sup>1/</sup> which filed income tax returns for fiscal years ending in 1963)

Industry	Firms reporting		Production workers 2/ payroll (\$000)	Sales (\$000)	Profit (\$000)	Payroll Sales %	Profit Sales %
	Profits	Losses					
Electroplating, plating and anodizing	2	3	93	265	-26	31.1	-9.8
Screw machine products, bolts, nuts and screws	1	3	217 a/	821 a/	20	26.4	2.4
Aluminum, metal and glass windows, doors and screens	7	3	454 a/	4,387 a/	399	10.3	9.1
Fabricated wire products	8	2	377 a/	3,276	659	11.5	20.1
Miscellaneous fabricated metal products and hardware	10	8	958	5,155	439	18.6	8.5
Metal working machinery	6	-	397	2,082	603	19.1	29.0
Other non electrical machinery	1	2	83	553	171	15.0	30.9
Special industry and farm machinery	2	1	92	463	115	19.9	24.8
Electrical transmission and distribution equipment	7	1	2,841	17,076	6,916	16.6	40.5
Electrical industrial apparatus	7	2	577	5,001	1,416	11.5	28.3
Household appliances	8	2	3,380	35,133	7,809	9.6	22.2
Electric lighting and wiring equipment (including lamps)	9	2	1,374	9,626	3,442	14.3	35.8
Radio and television receiving sets; phonograph parts and communication equipment	3	1	536	6,019	631	8.9	10.5
Electronic components and accessories	12	2	1,280	8,910	3,242	14.4	35.3
Storage batteries and other electrical machinery and equipment	3	-	251	1,909	809	15.2	42.4
Transportation equipment	1	2	120 a/	765	137	15.7	17.9
Watches, clock parts and light meters	3	-	2,741	11,987	2,412	22.9	20.1
Mechanical measuring and controlling instruments	4	-	644	4,605	1,471	14.0	31.9
Other professional and scientific instruments	3	1	1,482	5,669	934	26.1	16.5
Precious metal jewelry	1	3	69 a/	655	96	10.5	14.7
Cutting and polishing of diamonds	1	2	54	668 a/	38	8.1	5.7
Baseballs, softballs and other leather sport goods	6	2	1,944	7,573	-308	25.7	-4.1
Costume jewelry, costume novelties	1	3	339	2,496	-6	13.6	-0.2

See footnotes at end of table, page 48

## PAYROLL AND PROFITS RELATED TO SALES; BY INDUSTRY AND PROFIT STATUS

(Coverage: All firms with EDA-promoted manufacturing plants, excluding contractors,<sup>1/</sup> which filed income tax returns for fiscal years ending in 1963)

Industry	Firms reporting		Production	Sales	Profit	Payroll	Profit
	Profits	Losses	workers 2/ payroll (\$000)	(\$000)	(\$000)	\$ Sales	\$ Sales
Brooms, brushes and hair bristles	4	1	324	1,713	211	18.9	12.3
Manufacturing industries; n.e.c. (Xmas ornaments, shell novelties, umbrellas, candles, firearms, zippers, dolls, doll parts and non plastic toys)	9	6	1,402 a/	6,107	912	23.0	14.9
By Asset Size:							
\$0 - \$ 999,999	314	493	39,849	201,460	18,757	19.8	9.3
Profitable			31,289	165,757	23,506	18.9	14.2
Unprofitable		179	8,560	35,703	-4,749	24.0	-13.3
\$ 1,000,000 - \$ 4,999,999	100	121	36,470	237,939	35,203	15.3	14.8
Profitable			33,878	215,476	37,696	15.7	17.5
Unprofitable		21	2,592	22,463	-2,493	11.5	-11.1
\$ 5,000,000 - \$ 9,999,999	10	11	8,604	114,610	14,841	7.5	12.9
Profitable							
Unprofitable		1					
\$ 10,000,000 - \$ 100,000,000	10	12	16,349	241,261	45,935	6.8	19.0
Profitable							
Unprofitable		2					
All asset size:	434	637	101,272	795,270	114,736	12.7	14.4
Profitable			88,288	723,267	125,232	12.2	17.3
Unprofitable		203	12,984	72,003	-10,496	18.0	-14.6

<sup>1/</sup> The breakdown of the cost of goods sold was the main criterion in determining whether a firm was a contractor or not. If no purchases of raw material appeared in the cost breakdown and/or no inventories were reported, it was assumed that the firm operated on a contract fee basis.<sup>2/</sup> Calculated from data submitted by reporting firms to the Bureau of Labor Statistics, on weekly payroll of production and related workers who worked or received pay for any part of the pay period ending nearest the 15th of each month.

a/ One firm did not report payroll.

b/ Two firms did not report payroll.

c/ One firm broke even.

d/ One firm did not report sales.

e/ Includes data for one firm which also operates a non-Fomento plant.

## EXHIBIT 22

Shipping Weights of Sweaters,  
Puerto Rico to the United States

Year ended August 31, 1965	2,644,592 lbs.
Year ended August 31, 1964	2,397,181 lbs.
Year ended August 31, 1965	2,888,714 lbs.
January - August 1963	1,693,745 lbs.
January - August 1964	1,419,455 lbs.
January - August 1965	2,033,589 lbs.

SOURCE: Monthly reports of shipments from Puerto Rico to the United States (revised subsequent to August 1965 through November 8, 1965)

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## EXHIBIT 24

[Received Aug. 26, 1964]

U.S. DEPARTMENT OF LABOR  
Wage and Hour and Public Contracts Divisions  
Washington 25, D.C. 20210

Office of the  
Administrator

August 24, 1964

Dr. Lazare Teper, Director  
Research Department  
International Ladies' Garment  
Workers' Union  
1710 Broadway  
New York 19, New York

Dear Dr. Teper:

Mr. Nystrom has requested me to respond to your letter of May 4, 1964. It presents two questions concerning the words "pertinent" and "unabridged", as used in the sentence in 29 CFR 511.13 which requires that testimony as to inability to pay the statutory minimum wage or adjust to a higher wage order rate be supported by tangible objective data, "including pertinent unabridged profit and loss statements and balance sheets for a representative period of years for the individual firm or firms involved."

You express an understanding that the word "pertinent" includes firms that are parties to the filing of a pre-hearing statement under 29 CFR 511.8 but excludes those which are not parties to the particular proceeding, even though they may be related to firms which are parties. It is our opinion that, as the requirement is merely a condition to receiving testimony of inability to adjust to certain minimum wage requirements, the "pertinent" documents are those which relate to the firms to which the testimony relates. In other words, the required profit and loss statements and balance sheets must be those of the firms claimed in the testimony to be unable to adjust to the higher wage rate, regardless of their status in the proceedings or their relationship to the parties.

# EXHIBIT 23 (Id) (Rec)

## FREIGHT COSTS PER HOUR OF LABOR SWEATER AND KNIT SWIMWEAR INDUSTRY, PUERTO RICO

Company Group or Company	Financial Statement for Year Ending	Covered Labor	Freight	Freight as Per Cent of Labor	Average Hourly Earnings	Freight Per Hour of Labor
Finotex group	December 31, 1964	\$ 248,802.30	\$ 12,983.75	5.2%	\$1.22	6.3¢
Glamourette group	January 2, 1965	\$ 463,311.42	\$ 8,898.19	1.9%	\$1.22	2.3¢
Gordonshire group	June 30, 1965	\$1,340,230.	\$ 113,397.	8.5%	\$1.25	10.6¢
Northridge group	December 31, 1964	\$ 723,202.09	\$ 1,309.84	0.2%	\$1.25	0.2¢
Puritana Mfg. Corp.	December 31, 1964	\$1,015,902.	not shown		\$1.30	
Rosita Mills	December 31, 1964	\$ 365,725.98	\$ 6,238.69	1.7%	\$1.24	2.1¢
Sigo Corp.	December 31, 1964	\$ 214,610.78	\$ 9,328.32	4.3%	\$1.19	5.1¢
Textile Dye Works	December 31, 1964	\$ 83,563.60	\$ 7,450.84	8.9%	\$1.26	11.2¢
Yauco Super Knits	December 31, 1964	\$ 437,104.17	\$ 15,328.13	3.5%	\$1.20	4.2¢

SOURCE: Financial statements submitted to Industry Committee 75  
Hourly earnings based on the Wage and Hour and Public Contracts Divisions surveys

EXHIBIT 24

[Received Aug. 26, 1964]

U.S. DEPARTMENT OF LABOR  
Wage and Hour and Public Contracts Divisions  
Washington 25, D.C. 20210

August 24, 1964

Office of the  
Administrator

Dr. Lazare Teper, Director  
Research Department  
International Ladies' Garment  
Workers' Union  
1710 Broadway  
New York 19, New York

Dear Dr. Teper:

Mr. Nystrom has requested me to respond to your letter of May 4, 1964. It presents two questions concerning the words "pertinent" and "unabridged", as used in the sentence in 29 CFR 511.13 which requires that testimony as to inability to pay the statutory minimum wage or adjust to a higher wage order rate be supported by tangible objective data, "including pertinent unabridged profit and loss statements and balance sheets for a representative period of years for the individual firm or firms involved."

You express an understanding that the word "pertinent" includes firms that are parties to the filing of a pre-hearing statement under 29 CFR 511.8 but excludes those which are not parties to the particular proceeding, even though they may be related to firms which are parties. It is our opinion that, as the requirement is merely a condition to receiving testimony of inability to adjust to certain minimum wage requirements, the "pertinent" documents are those which relate to the firms to which the testimony relates. In other words, the required profit and loss statements and balance sheets must be those of the firms claimed in the testimony to be unable to adjust to the higher wage rate, regardless of their status in the proceedings or their relationship to the parties.

You also express your "understanding that the phrase 'unabridged profit and loss statements and balance sheets' refers to the most detailed profit and loss statements and balance sheets prepared for the pertinent firm by its accountants in the normal course of its business operations; as such, unabridged profit and loss statements and balance sheets must include all the accompanying schedules, comments, notes and certifications which the accountants made a part of such profit and loss statements and balance sheets." We consider the term as used in the regulations to refer to profit and loss statements and balance sheets that are prepared in accordance with accepted accounting practices in the usual course of business for the information of stockholders and others concerned with operations of the business, in the complete form in which such documents are prepared by the firm's accountants without any deletions therefrom or other abridgment. Schedules, comments, notes and certifications which the accountants made a part of the profit and loss statement or balance sheet as prepared by them may not, of course, be omitted, for this would constitute an abridgment.

Sincerely yours,

/s/ C. T. Lundquist  
Administrator

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EXHIBIT 25

NORTHRIDGE KNITTING MILLS, INC.

P.O. BOX 267

San German, Puerto Rico

July 30, 1965

Messrs. Kelberg & Dorff  
485 Fifth Avenue  
New York, New York 10017

Attention: Mr. Paul R. Kelberg

Dear Mr. Kelberg:

In answer to your letter of July 28, 1965 we are pleased to advise you that we do report to the United States Department of Commerce, Bureau of Customs, all the garments exported to the United States. This is done to comply with the Bureau of Customs Regulations.

On every shipment made, we have to prepare a form, a sample of which is enclosed herein. This form, issued at all times in the name of Northridge Knitting Mills, Inc., is turned over to our freight forwarder, or the carrier. The forwarder, or the carrier, presents this document for clearance through customs, at the port of shipment.

Should you require any additional information, please do not hesitate to contact us.

Yours very truly,  
NORTHRIDGE KNITTING MILLS, INC.  
/s/ G. Martinez  
Controller

GM/1pc.

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Form 75-1  
(Rev. July 1962)  
(See Instructions on  
Reverse Side)

U.S. DEPARTMENT OF COMMERCE  
BUREAU OF THE CENSUS—BUREAU OF INTERNATIONAL COMMERCE

SHIPPER'S EXPORT DECLARATION

OF SHIPMENTS FROM THE UNITED STATES

Export Shipments Are Subject To U.S. Customs Inspection

READ CAREFULLY THE INSTRUCTIONS ON BACK TO AVOID DELAY AT SHIPPING POINT

For shipments to foreign countries, the export declaration (a) must be presented to and authenticated by the Collector of Customs before the goods are placed on pier or deck or other place of loading for the purpose of exporting by water or air; (b) must be presented to and authenticated by the Collector prior to exportation where the goods are exported by other means.

Declarations Should Be Typewritten Or Prepared In Ink

Form approved. Budget Bureau No. 41-R397.5.

**CONFIDENTIAL** For use solely for official purposes authorized by the Secretary of Commerce. Use for unauthorized purposes is not permitted. (Title 15, Sec. 30.5 (b) C.F.R.; 50 U.S.C. App., 2026c.)

Customs Authentication (For Customs use only.)

FILE NO. (For Customs use only.)

Do Not Use This Area

District

Port

Country (For customs use only)

1. FROM (U.S. Port of Export)  
San Juan, P.R.

2. METHOD OF TRANSPORTATION (check one):  
☐ Vessel ☒ Air ☐ Other (Specify) \_\_\_\_\_

2a. EXPORTING CARRIER (If vessel, give name of ship, flag and pier number. If air, give name of airline.)  
Add Airfreight Corp.

3. EXPORTER (Principal or seller—licensee)  
Northridge Kntg. Mills Inc., Box 267, San German, P.R.

ADDRESS (Number, street, place, state)

4. AGENT OF EXPORTER (Forwarding agent)

ADDRESS (Number, street, place, state)

5. ULTIMATE CONSIGNEE  
Donwood Ltd. 1407 Bdwy., N.Y.N.Y.

ADDRESS (Place, country)

6. INTERMEDIATE CONSIGNEE

ADDRESS (Place, country)

7. FOREIGN PORT OF UNLOADING (For vessel and air shipments only)  
N.Y., N.Y.

8. PLACE AND COUNTRY OF ULTIMATE DESTINATION (Not place of transshipment)  
1407 Bdwy., N.Y., N.Y.

(9) MARKS AND NOS.	(10) NUMBER AND KIND OF PACKAGES, DESCRIPTION OF COMMODITIES, EXPORT LICENSE NUMBER, EXPIRATION DATE (OR GENERAL LICENSE SYMBOL) (Describe commodities in sufficient detail to permit verification of the Schedule B commodity numbers assigned. Do not use general terms. Insert required license information on line below description of each item)	(11) SHIPPING (Gross) WEIGHT IN POUNDS (required for vessel and air shipments only)	(12) SPECIFY "D" OR "F"	(13) SCHEDULE B COMMODITY NO.	(14) NET QUANTITY IN SCHEDULE B UNITS (State unit)	(15) VALUE AT U. S. PORT OF EXPORT (Selling price or cost if not sold, including inland freight, insurance and other charges to U. S. port of export) (Nearest whole dollar; omit cents figures)
1 to 100 inc.	100 ctns. of ladies or children sweaters	00000	0	84137 84147	00000	0000000

16. WAYBILL OR MANIFEST No. (of Exporting Carrier)  
000000

17. DATE OF EXPORTATION (Not required for shipments by vessel)

18. THE UNDERSIGNED HEREBY AUTHORIZES \_\_\_\_\_ (Name and address—Number, street, place, State)  
TO ACT AS FORWARDING AGENT FOR EXPORT CONTROL AND CUSTOMS PURPOSES. (DULY AUTHORIZED)

EXPORTER \_\_\_\_\_ BY OFFICER OR EMPLOYEE \_\_\_\_\_

19. I CERTIFY THAT ALL STATEMENTS MADE AND ALL INFORMATION CONTAINED IN THIS EXPORT DECLARATION ARE TRUE AND CORRECT. I AM AWARE OF THE PENALTIES PROVIDED FOR FALSE REPRESENTATION. (See Paragraphs 1 (c), (e), on reverse side.)

Signature \_\_\_\_\_  
(Duly authorized officer or employee of exporter or named forwarding agent)

For \_\_\_\_\_  
(Name of corporation or firm, and capacity of signer; e.g., secretary, export manager, etc.)  
Box 267, San German, P.R.

Address \_\_\_\_\_

Declaration should be made by duly authorized officer or employee of exporter or of forwarding agent, dated by signature.  
If shipping weight is not available for each Schedule B item listed in column (13) included in one or more packages, insert the approximate gross weight for each Schedule B item. The total of these estimated weights should equal the actual weight of the entire package or packages.  
Designate foreign merchandise (re-exports) with an "F" and exports of domestic merchandise produced in the United States or changed in condition in the United States with a "D." (See Instructions on reverse side.)  
CARRIERS, FORWARDERS AND EXPORTERS ARE REMINDED THAT IF A DESTINATION CONTROL STATEMENT IS REQUIRED ON A SHIPPER'S EXPORT DECLARATION.

Do Not Use This Area

# INSTRUCTIONS FOR THE USE OF THE YELLOW SHIPPER'S EXPORT DECLARATION

(Commerce Form 7525-V)

(Follow Carefully to Avoid Delay at Shipping Point)

## I. PROVISIONS OF LAW AND REGULATIONS.

(a) Vessels shall not be cleared for foreign ports until export declarations covering the cargo, or its parts have been delivered to the collector at the point of exportation by the owner, shipper, or consignee thereof. Similar provisions apply to exportations by rail, air, vehicle, or ferry.

(b) A declaration presented to a Collector of Customs or Postmaster and used to effect an exportation of any commodity for which a validated export license or a general license is required, constitutes a representation by the exporter (1) that all statements made and information set forth in the declaration have been furnished by him or on his behalf for the purpose of effecting an exportation in accordance with the export control regulations; (2) that the exportation of the commodity described in the declaration is authorized under the general or validated export license identified in the declaration; (3) that the statements contained in the declaration are identical in all respects with the contents of the validated export license, or the terms, provisions and conditions of the applicable general license; and (4) that all other terms, provisions, and conditions of the export control regulations applicable to the exportation have been met.

(c) It is unlawful under the export regulations and the export control law, in addition to the provisions of any other law, for any person, whether or not situated in the United States, knowingly to make any false or misleading representation, statement, or certification, or to falsify or conceal any material fact, whether directly to the Bureau of International Programs, the Bureau of the Census, any collector of customs, or an official of any other United States agency, or indirectly through any other person or foreign government agency or official, for the purpose of or in connection with effecting an exportation from the United States, or the transportation, transshipment or diversion of any such exportation, or the issuance, or maintenance in effect of any document relating to export control, or in the course of an investigation or other action instituted under the authority of the Export Control Act of 1949, as amended. Any person violating the provisions of law and/or the Export Control Regulations referred to herein is subject to fine of not more than \$10,000 or imprisonment for not more than 5 years, or both (Act of June 23, 1949, c. 645, 62 Stat. 749; 18 U.S.C. Sec. 1001); and/or to fine of up to five times the value of the exports involved or \$20,000, whichever is greater, or imprisonment for not more than 5 years, or both (Export Control Act of 1949, as amended, Sec. 3; 63 Stat. 8; 30 U.S.C. App. Sec. 3023).

(d) Commodities which are intended to be, or are being, or have been exported in violation of the export control law and the regulations promulgated thereunder, are subject to seizure, detention, condemnation and sale under the Act of June 15, 1917, Ch. 30, Title VI, Sec. 1, 40 Stat. 223; 22 U.S.C. Sec. 401, as amended.

(e) It is a criminal offense for any person to knowingly make to the Bureau of the Census or the Bureau of International Programs any false or misleading statement or representation relating to information on the Shipper's Export Declaration, subject to a maximum penalty of \$10,000 fine or imprisonment for 5 years, or both (18 U.S.C. Sec. 1001).

(f) Shipper's export declarations must also be filed for shipments between the United States and its outlying areas.

(g) For instructions regarding the use of this form for parcel-post exportations, see current United States Postal Manual, Chapter 2. One copy of the declaration should be mailed by postmaster to Foreign Trade Branch, Economic Operations Division, Bureau of the Census, 434 Customhouse, New York 4, N.Y.

## II. SHIPPER'S EXPORT DECLARATIONS (Commerce Form 7525-V).

(a) Must be made in triplicate for shipments by vessel, air, rail, car, vehicle, and ferry for all merchandise shipped to foreign countries, including Canada, where that country is not the final destination. For shipments finally destined to Canada, and between the United States and its outlying areas, the declarations must be made in duplicate. Under export control regulations, additional copies may be required by the Bureau of International Programs. (Commerce Form 7525-V should not be filed for merchandise shipped in-transit through the United States from one foreign country to another. In lieu thereof, "Shipper's Export Declaration for In-transit Goods" on Commerce Form 7513 should be filed.)

(b) The exporter or his forwarding agent (duly authorized by a general power of attorney on file in the Customhouse or by specific power of attorney in item 18 of the export declaration form) or a duly authorized officer or employee of either must sign the original copy of the declaration in the space provided for signature. The name of the corporation or firm and the capacity of the signer (secretary, export manager, etc.) must be set out in the line captioned "For" in item 19. Oath is not required on the declaration, but the provisions of law and export control regulations applicable to false representations, as indicated in paragraph 1 (c) and (e), above, are fully applicable.

(c) Designation of agent must be in writing and signed by the exporter on declaration or in separate document providing similar authorization, which shall be filed with the collector. Export control regulations define a "forwarding agent" as a person authorized by a named exporter to perform for the exporter actual services which facilitate exportation of the commodities described in the declaration, such as preparing the declaration, attending to clearance of the shipment by submission of documents to the Collector of Customs or export control officers, securing cargo space or delivering the commodities to the exporting carrier, obtaining bills of lading in connection with the exportation, and attending to the formalities of consular invoices, certificates of origin, and other like documents; but such person need not be regularly engaged in the freight forwarding business.

(d) An authenticated declaration evidences the existence of a validated export license or an exportation permitted by an applicable general license. It is a violation of the export control law and regulations for any person to receive, use, alter, or assist in or permit the use or alteration of, any export declaration which has been authenticated by a Collector of Customs in connection with the exportation of any commodity under a general or validated export license, for the purpose of facilitating or effecting any exportation other than that set forth in such declaration and in accordance with the terms, provisions, and conditions thereof. Any person receiving an authenticated declaration showing evidence of unauthorized change, alteration, or amendment may not take any action to facilitate the exportation, but must report the facts to the nearest Collector of Customs and surrender the declaration to such Collector.

(e) In the case of exportations subject to the export control law and regulations, the original and two copies (for additional copies if required or authorized by export control regulations) of the declaration submitted to the Collector of Customs at the point of exit by the exporter, his named duly authorized forwarding agent (or a duly authorized officer or employee of either) will be authenticated by the Collector. The Collector will retain the original and one copy, and will return one (or more where required or authorized) authenticated copy to the exporter or such agent. One copy to returned shall be delivered by the exporter, or his agent, to the exporting carrier for attachment to the outward manifest. The additional copy or copies, when required or authorized, shall be used by the exporter in conformity with export control regulations. All copies not used shall be returned to the Collector. The statistical (manifest) copy of the declaration will be forwarded by the Collector to the Bureau of the Census. Collectors will not authenticate a declaration which has been altered, changed, or amended, except as and to the extent authorized by the export control regulations.

(f) For shipments by rail to Mexico and Canada separate declarations shall be prepared for each carload.

(g) Shipper's Export Declarations are for use solely for official purposes authorized by the Secretary of Commerce. Use for unauthorized purposes is not permitted. In accordance with the provisions of the Export Control Act (Title 30, U.S.C. App. 2023), information from the export declarations will be published or disclosed only if the Secretary has determined that the withholding thereof is contrary to the national interest.

## III. EXPLANATION OF TERMS.

ITEM 1. *United States Port of Export.*—Insert United States Customs port of exportation in terms of Schedule D, "Code Classification of Customs Districts."

ITEM 2. *Method of Transportation.*—Check whether exported by vessel (including ferry), air, or other means of transportation. If "Other," specify; i.e., rail, truck, etc.

ITEM 2a. *Exporting Carrier.*—In addition to checking the method of transportation in item 2, specify here the name of the exporting carrier. If vessel, give name of ship, flag, and number or name of pier at which the goods were laden. If air, give name of airline. If "Other" (rail, vehicle, etc.), give name of carrier and identification by number or other designation.

ITEM 3. *Exporter.*—Exporter named shall be licensee named in the validated export license or person entitled to make the exportation under applicable general license in conformity with export control regulations.

ITEM 4. *Agent of Exporter.*—State name of duly authorized forwarding agent of named exporter. See paragraph II (c).

ITEM 5. *Ultimate Consignee.*—Ultimate consignee (whether by sale in U.S. or abroad, or by consignment) shall be person named as ultimate consignee in validated export license or authorized to be ultimate consignee under applicable general license in conformity with export control regulations.

ITEM 6. *Intermediate Consignee.*—Intermediate consignee shall be person named as such in validated export license or authorized to act as such under applicable general license and in conformity with export control regulations. If none, state "none." Intermediate consignee should be inserted if known at time of authentication.

ITEM 7. *Foreign Port of Unloading.*—Foreign port of unloading (i.e., foreign port at which the merchandise will be unladen from the exporting carrier specified in item 2a) should be shown for vessel and air shipments only.

ITEM 8. *Place and Country of Ultimate Destination.*—The final place and country of destination, not the place of transshipment, should be shown in the space provided for "Place and Country of Ultimate Destination." Special care should be taken to give the final place and country of destination for goods shipped through Canada, United Kingdom, Canal Zone, Chile, Peru, or other seaboard countries for transshipment to other countries, such as through Chile or Peru, destined for Bolivia.

## IV. DESCRIPTION OF ARTICLES, QUANTITIES, AND VALUES.

COLUMN 9.—Insert marks and numbers.

COLUMN 10.—Insert number and kind of packages, description of commodities, export license number, and expiration date, or general license symbol. Commodities must be described by nature and quantity in sufficient detail to permit verification of the Schedule B commodity numbers assigned. The description of the articles must be definite and complete, preferably the common commercial name of the specific article, and must conform with that set forth in a validated export license or with the requirements of the applicable general license. General terms such as "dry goods," "groceries," "meats," etc., are insufficient. Catalog numbers or other characteristic trade identifications should be where they will aid such description. Identification or description by trademark or name should be avoided where possible.

COLUMN 11.—Insert gross weight in pounds for vessel and air shipments only.

COLUMN 12.—Specify whether of domestic or foreign origin. Exports of domestic merchandise include commodities which are the growth, produce, or manufacture of the United States. Exports of foreign merchandise include commodities of foreign origin which entered the United States as imports, and which, at the time of exportation, are in the same condition as when imported. Commodities of foreign origin which have been changed in the United States from the form in which they were imported, or which have been enhanced in value by further manufacture in the United States, are considered as "domestic" commodities.

The above definition of the distinction between domestic and foreign merchandise is intended only for use in reporting column (12) on this export declaration and is intended for statistical purposes only.

COLUMN 13.—Insert the Schedule B commodity code number. (See Instruction VII (a) below.)

COLUMN 14.—Insert the net quantity in Schedule B unit. State the unit of quantity shown; i.e., pounds, square yards, etc.

COLUMN 15.—Insert the dollar value at time and place (U.S. port) of export (omit cents figures). Value stated should be the selling price, or cost if not sold, including inland freight, insurance, and other charges to border point, airport, or exporting airport. Ocean freight, marine insurance, and other charges incurred beyond the U.S. port of exportation should be excluded.

ITEM 16.—For convenience of exporter, to be inserted if desired.

ITEM 17.—To be inserted by Collector of Customs.

## V. SIGNATURES.

ITEMS 18 and 19.—See paragraphs II (b) and II (c) of these instructions.

## VI. FOREIGN COMMERCE STATISTICAL REGULATIONS—EXPORT CONTROL REGULATIONS.

For more detailed information regarding the preparation of the export declaration, refer to the Regulations for Collection of Statistics of Foreign Commerce and Navigation of the United States (Title 13, Ch. 1, Part 30, Code of Federal Regulations), copies of which may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington 25, D.C. Information concerning export control law and regulations may be obtained from the Bureau of International Programs, Washington 25, D.C., or from the Department of Commerce Field Offices.

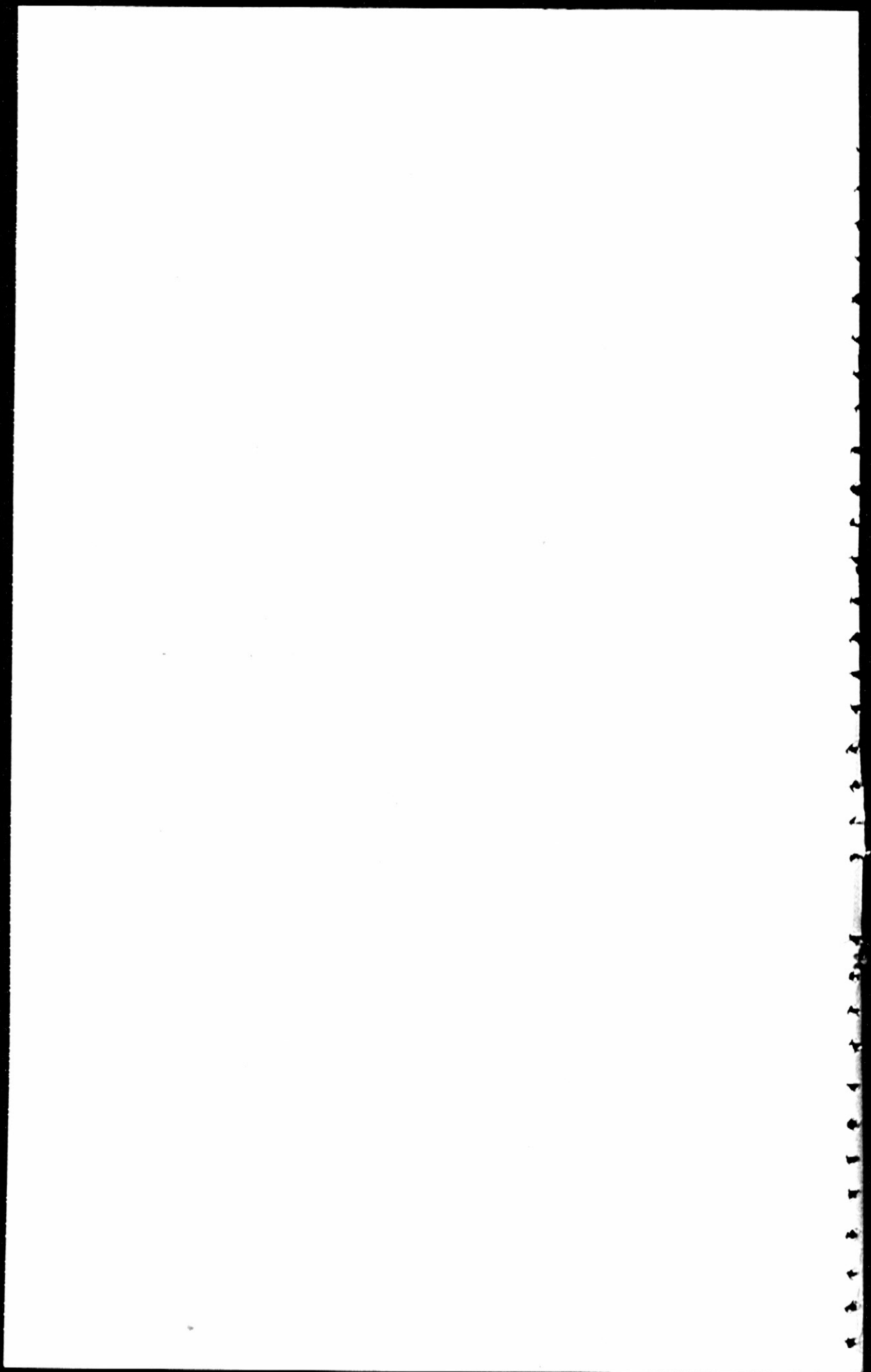
## VII. SCHEDULE B AND BLANKS.

(a) Schedule B, Statistical Classification of Domestic and Foreign Commodities Exported from the United States, may be purchased from the Superintendent of Documents, Government Printing Office, Washington 25, D.C., local Collectors of Customs, and the Department of Commerce Field Offices.

(b) Shipper's Export Declaration blanks may be purchased from the Superintendent of Documents, Government Printing Office, Washington 25, D.C., local Collectors of Customs, and Department of Commerce Field Offices located in principal cities. They may be printed by private parties provided they conform to the official form in size, wording, color, and quality (weight) of paper stock, and arrangement. An authentic Shipper's Export Declaration may not be reproduced in any form.

U.S. GOVERNMENT PRINTING OFFICE: 1941-O-218880

For sale by the Superintendent of Documents, U.S. Government Printing Office, Washington 25, D.C. — Price \$1.00 a pad.



UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA

BONITA, INC., et al.,

Petitioners,

v.

W. WILLARD WIRTZ, Secretary  
of Labor, et al.,

Respondents.

No. 19841

**PREHEARING STIPULATION**

Counsel for the respective parties to the above-entitled review proceedings hereby stipulate:

I. The questions presented in this proceeding are as follows:

1. Whether the Secretary of Labor abused his discretion under Section 8(a) of the Fair Labor Standards Act ("the Act") in establishing Industry Committee No. 75 to conduct an additional review of the minimum wage rate for the Sweater and Knit Swimwear Industry in Puerto Rico during a biennial period.

2. Whether the Secretary of Labor's appointment of Herbert Alper, Joseph Schwartz, Alberto E. Sanchez and Emile J. DeLeo as members of Industry Committee No. 75 was contrary to Sections 5 and 8 of the Act.

3. Whether Industry Committee No. 75 violated Section 3(a) of the Administrative Procedure Act and Sections 305 and 307 of the Federal Register Act in ruling that five of the eighteen petitioners be excluded as "parties" to the Committee proceedings. Petitioners contend that this ruling was based on an unpublished interpretive rule.

4. Whether Industry Committee No. 75 violated Section 5 of the Act and 29 C.F.R. §§ 511.9 and 511.12(b)

in recommending a minimum wage rate of \$1.22 an hour at its executive session on November 12, 1965.

5. Whether the Report, Findings of Fact, and Recommendations of Industry Committee No. 75 is supported by substantial evidence.

II. Petitioners assert the following additional issue:

"Whether Industry Committee No. 75 gave Committee members Titelman and Atkind adequate notice, under Section 5 of the Act and respondents' regulations, of the changed purpose of the Committee's executive session on November 12, 1965." Respondents do not agree that this is an issue in the proceedings.

III. The parties agree that there is no force or effect to the \$1.20 minimum wage rate voted by Industry Committee No. 75 at its November 10, 1965 executive session, since the Committee did not adopt a report recommending such rate as required by 29 C.F.R. § 511.16.

IV. Respondents reserve the right to contend that issues 1, 2, and 3 above were not properly urged before Industry Committee No. 75 and there were no reasonable grounds for failure to do so. Petitioners do not agree that this is an issue in the proceedings.

V. The parties will submit a joint motion providing for the filing of their briefs and joint appendix. Only such portions of the Petition for Review as shall be designated by counsel shall be printed in the joint appendix.

/s/ Franklin M. Schultz  
/s/ Mitchell J. Cooper  
Counsel for Petitioners

/s/ Robert E. Nagle  
Counsel for Respondents

Dated: February 4, 1966

**PREHEARING ORDER**

Before: Fahy, Circuit Judge, in Chambers.

Counsel for the parties in the above-entitled case having submitted their stipulation pursuant to Rule 38(k) of the General Rules of this Court, and the stipulation having been considered, the stipulation is approved, and it is

**ORDERED** that the stipulation shall control further proceedings in this case unless modified by further order of this court, and that the stipulation and this order shall be printed in the joint appendix herein.

BRIEF FOR PETITIONERS

**United States Court of Appeals**

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 19,841

BONITA, INC., et al.,

*Petitioners*

v.

W. WILLARD WIRTZ, SECRETARY OF LABOR, et al.,

*Respondents*

ON PETITION FOR REVIEW OF A WAGE ORDER  
ISSUED BY THE ADMINISTRATOR OF THE  
WAGE AND HOUR DIVISION OF THE  
U. S. DEPARTMENT OF LABOR

Franklin M. Schultz  
888 Seventeenth Street, N. W.  
Washington, D. C. 20006

Mitchell J. Cooper  
1625 K Street, N. W.  
Washington, D. C. 20006

*Attorneys for Petitioners*

*Of Counsel:*

Paul R. Kelberg  
Kelberg & Dorff  
485 Fifth Avenue

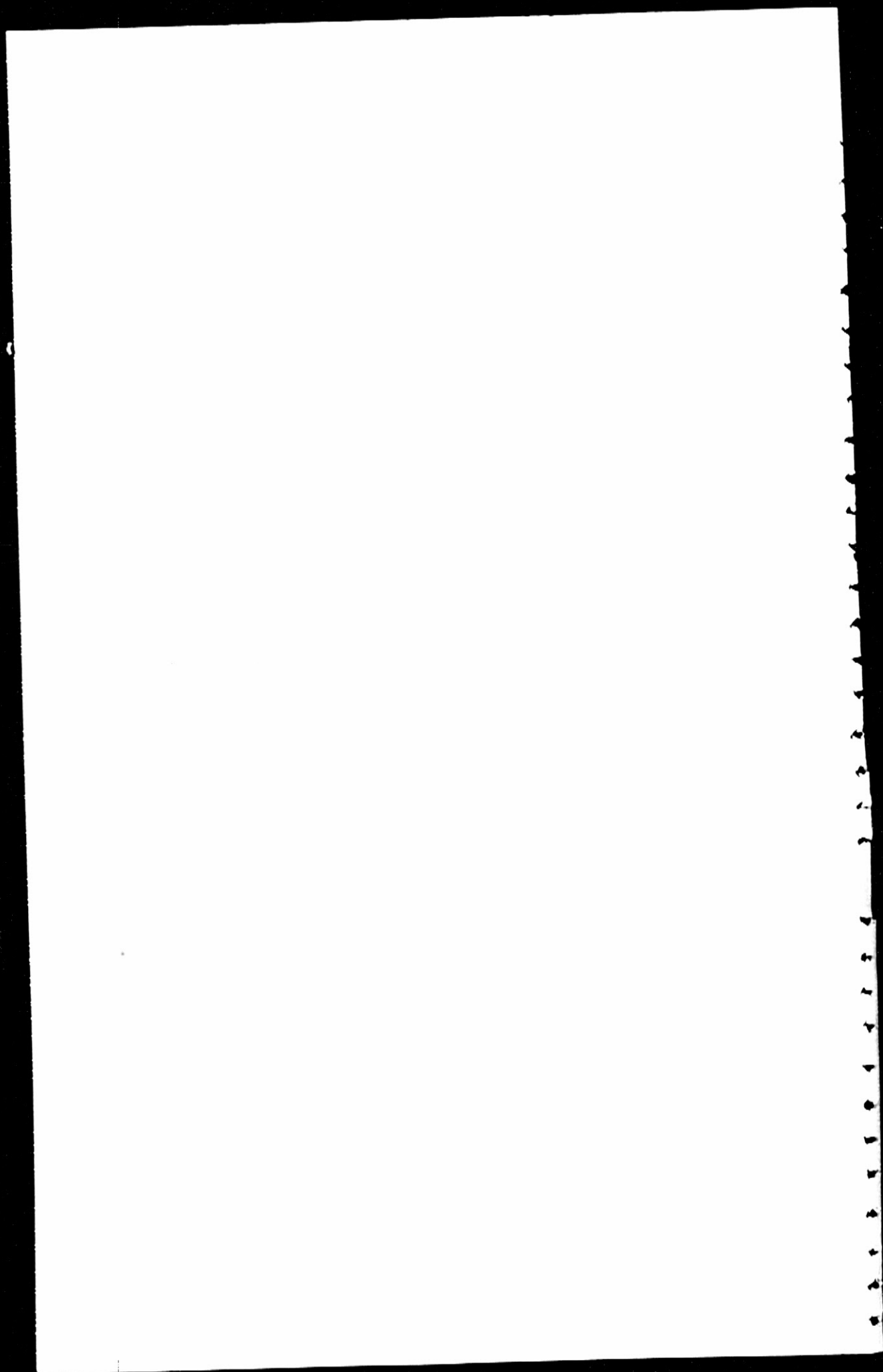
New York, New York 10017 United States Court of Appeals  
for the District of Columbia Circuit

Robert M. Kennan, Jr.  
Purcell & Nelson

888 Seventeenth Street, N. W.  
Washington, D. C. 20006

FILED JUN 2 1966

*Nathan J. Paulson*  
CLERK



(i)

## STATEMENT OF QUESTIONS PRESENTED

1. Whether the Secretary of Labor abused his discretion under Section 8(a) of the Fair Labor Standards Act ("the Act") in establishing Industry Committee No. 75 to conduct an additional review of the minimum wage rate for the Sweater and Knit Swimwear Industry in Puerto Rico during a biennial period.

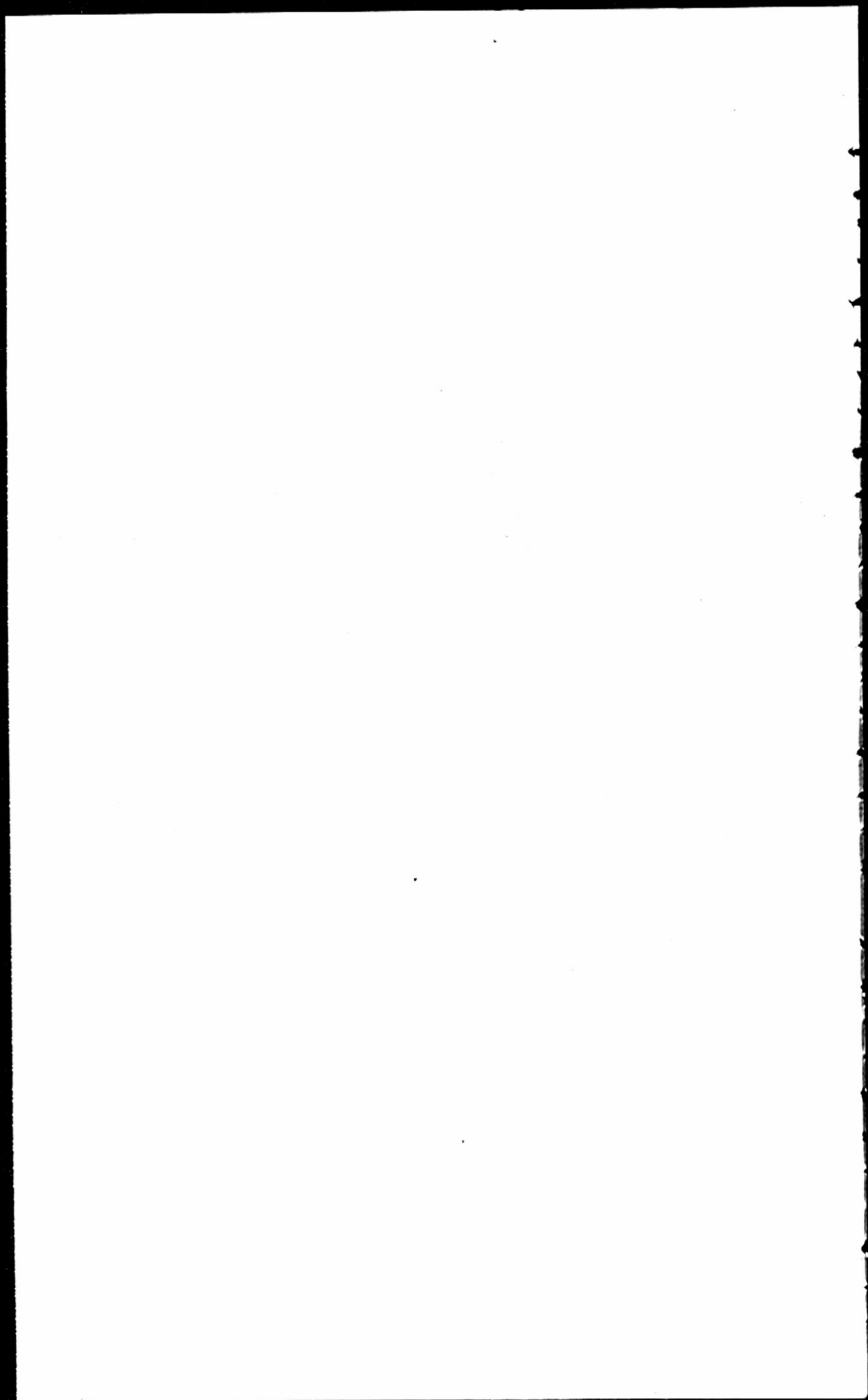
2. Whether the Secretary of Labor's appointment of Herbert Alper, Joseph Schwartz, Alberto E. Sanchez, and Emile J. DeLeo as members of Industry Committee No. 75 was contrary to Sections 5 and 8 of the Act.

3. Whether Industry Committee No. 75 violated Section 3(a) of the Administrative Procedure Act and Sections 305 and 307 of the Federal Register Act in ruling that five of the eighteen petitioners be excluded as parties to the Committee proceedings.

4. Whether Industry Committee No. 75 violated Section 5 of the Act and the governing regulations in recommending a minimum wage rate of \$1.22 an hour at its executive session on November 12, 1965.

5. Whether Industry Committee No. 75 gave Committee members Titelman and Atkind adequate notice, under Section 5 of the Act and respondents' regulations, of the changed purpose of the Committee's executive session on November 12, 1965.

6. Whether the Report, Findings of Fact, and Recommendations of Industry Committee No. 75 is supported by substantial evidence.



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Section 9, 29 U.S.C. § 209 . . . . .	18
Section 10(a), 29 U.S.C. § 210(a) . . . . .	2, 42
Section 10(b), 29 U.S.C. § 210(b) . . . . .	2
Ch. 676, § 6(a), 52 Stat. 1062 (1938) . . . . .	17
Ch. 676, § 8(b), 52 Stat. 1064 (1938) . . . . .	17
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Ch. 676, § 8(d), 52 Stat. 1064 (1938) . . . . .	17
Ch. 736, § 8, 63 Stat. 915 (1949) . . . . .	19
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Ch. 867, § 5(d), 69 Stat. 711 (1955) . . . . .	19
Federal Register Act, 49 Stat. 500-03 (1935), as amended, 44 U.S.C. § 301-14 (1965)	
Section 305(a), 44 U.S.C. § 305(a) . . . . .	26, 28
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CODE OF FEDERAL REGULATIONS, TITLE 29  
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29 C.F.R. § 511.1 . . . . .	42
29 C.F.R. § 511.7 . . . . .	25
29 C.F.R. § 511.8(b) . . . . .	18, 23, 25 <i>et passim</i> , 45
29 C.F.R. § 511.9 . . . . .	34
29 C.F.R. § 511.12(b) . . . . .	6, 32 <i>et passim</i>
29 C.F.R. § 511.13 . . . . .	3, 24, 25 <i>et passim</i> , 45
29 C.F.R. § 511.16 . . . . .	36, 40
29 C.F.R. § 511.18 . . . . .	19
29 C.F.R. § 512.7(b) . . . . .	24
29 C.F.R. § 611.1 . . . . .	2

LEGISLATIVE MATERIALS:

82 Cong. Rec. 1591-92 (1937) . . . . .	17
83 Cong. Rec. 9164 (1938) . . . . .	18
83 Cong. Rec. 9256 (1938) . . . . .	17
83 Cong. Rec. 9264 (1938) . . . . .	17, 18
H.R. 7200, 75th Cong., 1st Sess. § 5 (1937) . . . . .	17
S. 2475, 75th Cong., 1st Sess. § 5 (1937) . . . . .	17
H.R. Rep. No. 2235, 85th Cong., 2d Sess. (1958) . . . . .	10
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<i>Hearings Before the Subcommittee on Labor of the Senate Committee on Labor and Public Welfare, 89th Cong., 1st Sess., pt. 2 at 692 (1965)</i> . . . . .	9
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MISCELLANEOUS:

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30 Fed. Reg. 15292 (1965) . . . . .	1, 6
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U.S. Dep't Lab. Press Release No. 214 (March 27, 1965) . . . . .	22
U.S. Dep't Lab. Press Release No. 222 (June 10, 1965) . . . . .	22
2 FLETCHER, PRIVATE CORPORATIONS § 406 (perm. ed. rev. repl. 1954) . . . . .	39
Golding, <i>The Industry Committee Provisions of the Fair Labor Standards Act</i> , 50 Yale L.J. 1141, 1167 (1941) . . . . .	45
JAFFE, JUDICIAL CONTROL OF ADMINISTRATIVE ACTION 601 (1st ed. 1965) . . . . .	42
4 McQUILLAN, MUNICIPAL CORPORATIONS § 13.37 (3rd ed. 1949) . . . . .	39

# United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

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No. 19,841

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BONITA, INC., et al.,

v.

*Petitioners*

W. WILLARD WIRTZ, SECRETARY OF LABOR, et al.,

*Respondents*

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ON PETITION FOR REVIEW OF A WAGE ORDER  
ISSUED BY THE ADMINISTRATOR OF THE  
WAGE AND HOUR DIVISION OF THE  
U. S. DEPARTMENT OF LABOR

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## BRIEF FOR PETITIONERS

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### JURISDICTIONAL STATEMENT

This is a statutory proceeding to set aside an order issued by the Secretary of Labor under Section 8(d) of the Fair Labor Standards Act, 52 Stat. 1060-69 (1938), as amended, 29 U.S.C. §§ 201-19 (1965) ("the Act"). The Secretary's order, published in the Federal Register on December 10, 1965, provided that a minimum wage rate of \$1.22 an hour recommended by Industry Committee No. 75 for the Sweater and Knit Swimwear Industry in Puerto Rico take effect on December 26, 1965. 30 Fed. Reg. 15292 (1965). On December 11, 1965, this proceed-

ing was instituted by a petition filed pursuant to Section 10(a) of the Act, which grants this Court jurisdiction to set aside the Secretary's order. On the same day, petitioners filed a motion requesting a stay of the effectiveness of the Secretary's order pending adjudication of this proceeding. Upon respondents' consent, petitioners' motion was granted on December 23, 1965. The employees affected by the Secretary's order are fully protected during the pendency of this proceeding by undertakings filed pursuant to Section 10(b) of the Act.

### STATEMENT OF THE CASE

Petitioners are eighteen of the nineteen companies comprising the Sweater and Knit Swimwear Industry in Puerto Rico.<sup>1</sup> Unlike the mainland United States, the minimum wage for covered employees in Puerto Rico is determined according to the provisions of Sections 5 and 8 of the Act and regulations prescribed by the Administrator of the Wage and Hour and Public Contracts Division of the Department of Labor, 29 C.F.R. § 511 (1965). Under the Act and the regulations, minimum wages in Puerto Rico are to be increased to the mainland minimum as rapidly as is economically feasible, provided that the minimum wage does not substantially curtail employment or give industry in Puerto Rico a competitive advantage over industry on the mainland.

Section 8(a) of the Act provides that minimum wages in Puerto Rico are subject to biennial review, but the Secretary of Labor may in his discretion order an additional wage review during a biennium. Sections 5 and 8 delegate the powers of wage review and wage determination directly to tripartite industry committees appointed by the Wage and Hour Administrator. Such committees must include an equal number of members representing employers in the industry, employees in the industry, and the public.

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<sup>1</sup> The Industry is defined, for purposes of the Act, by 29 C.F.R. § 611.1 (1965).

In late November, 1964, Industry Committee No. 68-C reviewed the \$1.17 minimum wage rate in the Puerto Rican Sweater and Knit Swimwear Industry and recommended no increase. 29 Fed. Reg. 17812 (1964). Nine months later, on August 13, 1965, the Secretary of Labor established Industry Committee No. 75, a nine-member committee, to conduct an additional review of the Industry's minimum wage rate during a biennium. 30 Fed. Reg. 10114 (1965). The Sweater and Knit Swimwear Industry is the only industry in Puerto Rico for which the Secretary ordered such an additional wage review. J.A. 66, 68.

Pursuant to 29 C.F.R. 511.13 (1965), the eighteen petitioners filed with Industry Committee No. 75 a pre-hearing statement containing economic data and financial statements. Ex. 13.<sup>2</sup> At an executive session immediately preceding the Committee's public hearing on November 8, 1965, the Committee, on its counsel's recommendation, excluded five petitioners as parties to the Committee proceedings because of alleged deficiencies in their financial statements. J.A. 8-10, 43, 57, 62. The public hearing was then held on November 8 and 9 and on the morning of November 10, 1965. J.A. 10-15.

On the afternoon of November 10, 1965, the Committee met in executive session to determine the minimum wage rate. Employee members DeLeo, Schwartz, and Sanchez and employer member Alper proposed and voted for a minimum rate of \$1.25, but this proposal lost, four to five.<sup>3</sup> Employer members Atkind and Titelman moved

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<sup>2</sup> Pursuant to a Joint Motion granted on March 22, 1966, petitioners have lodged a copy of Exhibit 13 with the Clerk of this Court in lieu of printing it as part of the Joint Appendix.

<sup>3</sup> The three employee members were officials of the International Ladies' Garment Workers' Union (ILGWU), which had gone on record in support of a \$1.25 rate for this industry at the November, 1964 hearing. App. A, 1. (Appendix A reproduces the ILGWU's prehearing statement filed with Industry Committee

that the Committee approve the retention of a minimum rate of \$1.17. This motion lost by a vote of three to six. Public member Yagoda then moved that the Committee approve a minimum rate of \$1.20. Mr. Yagoda's motion twice failed to win a majority, but the third time carried by a vote of five to four, Messrs. Yagoda, Villaronga, Alper, Schwartz, and Sanchez in favor, Chairman Horlacher and Messrs. Atkind and Titelman opposed, Mr. DeLeo also opposed. J.A. 15-16.

The Chairman thereupon adjourned the meeting, stating that the Committee would reconvene on the morning of November 12 for the purpose of editing and signing a Report in light of the Committee's adoption of the \$1.20 rate. App. C, 6, J.A. 16<sup>4</sup>

In accordance with the terms of the November 10 adjournment, the Committee met in executive session on November 12 to edit and sign its report. J.A. 21, 24-26. Employer members Atkind and Titelman were absent, having been assured by the Chairman and officials of the Wage and Hour Division that their presence would

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No. 68-C in November, 1964. It is attached as Exhibit D to petitioners' Motion for Stay filed December 11, 1965 and is part of the record in this proceeding.) The ILGWU was also on record in support of a \$1.25 rate for this industry before Industry Committee No. 75. J.A. 174-75.

Employer member Alper, as President of the United Knitwear Manufacturers League, signed and filed a prehearing statement supporting a \$1.25 rate with Industry Committee No. 68-C in November, 1964. App. B, 2-4. (Appendix B reproduces this prehearing statement, which is attached as Exhibit E to petitioners' Motion for Stay filed December 11, 1965 and is part of the record in this proceeding.) The United Knitwear Manufacturers League was also on record in support of a \$1.25 rate for this industry before Industry Committee No. 75. J.A. 172-73.

<sup>4</sup> Appendix C reproduces Chairman Horlacher's affidavit, which is attached as Exhibit A to petitioners' Motion for Stay filed December 11, 1965 and is part of the record in this proceeding.

not be necessary. App. D, 9, App. E, 11.<sup>5</sup> Mr. Titelman had returned to New York and Mr. Atkind was looking after the affairs of his plant elsewhere in Puerto Rico. *Ibid.* Public member Villaronga left soon after the Committee convened. J.A. 17.

After the draft Report was edited, public member Yagoda moved that the Committee's November 10 \$1.20 decision be changed so as to increase the minimum rate to \$1.22. J.A. 18, 24. The Chairman ruled this motion out of order, stating that the meeting had been convened to edit and sign the Report, not to reconsider the \$1.20 rate previously voted upon. J.A. 18, 24-26. Employee member Schwartz thereupon challenged the Chairman's ruling. J.A. 18, 27. Public member Yagoda, noting the absence of members Atkind and Titelman, moved that the Committee be adjourned to reconvene with "full participation of the Committee"; this motion lost for want of a second. J.A. 19, 33. More discussion ensued as to the correctness of the Chairman's ruling, in the course of which the Department of Labor's Regional Attorney stressed that the Department would like to see a full complement of the Committee present for deliberations before any further action was taken. J.A. 20, 36.

Thereafter a majority of the Committee, Messrs. Yagoda, Alper, DeLeo, Schwartz, and Sanchez voted to oppose the ruling of the Chair. J.A. 39-40. The Committee then voted on public member Yagoda's motion to change the minimum rate to \$1.22. This motion was adopted by a vote of five to one, Messrs. Yagoda, Alper, DeLeo, Schwartz, and Sanchez in favor, Chairman Horlacher opposed, Messrs. Atkind, Titelman, and Villaronga absent. J.A. 20, 40.

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<sup>5</sup> Appendices D and E reproduce the affidavits of Messrs. Atkind and Titelman, which are attached as Exhibits B and C to petitioners' Motion for Stay filed December 11, 1965 and are part of the record in this proceeding.

Respondents published the \$1.22 minimum rate in the Federal Register on December 10, 1965 to be effective on December 26, 1965. 30 Fed. Reg. 15292. Petitioners commenced this action on December 11, 1965.

### STATUTES AND REGULATIONS INVOLVED

The statutes and regulations upon which petitioners rely are set forth in Appendix F annexed hereto.

### SUMMARY OF ARGUMENT

Eighteen of the nineteen companies in the Sweater and Knit Swimwear Industry in Puerto Rico brought this proceeding to challenge a minimum wage order made under Sections 5 and 8 of the Fair Labor Standards Act. These provisions delegate responsibility for determining minimum wages in Puerto Rico to tripartite industry committees appointed by respondents. Under Section 5 of the Act, such tripartite committees must be composed of a number of disinterested persons representing the public, a like number of persons representing employees in the industry, and a like number representing employers in the industry.

In this case, an industry committee determined the minimum wage for the Sweater and Knit Swimwear Industry in Puerto Rico in violation of Section 511.12(b) of the governing regulations, in that the meeting, at which the determination was made, had been called for a different purpose—a purpose not requiring the attendance of two of the Committee's three employer members. These two members were not given adequate notice of the meeting's changed purpose and were thereby deprived of their right to participate in the Committee's deliberations. This change in the meeting's stated purpose, without adequate notice to all committee members, violated not only Section 511.12(b) of the regulations, but also Section 5 of the Act, and established principles of common law.

The Secretary had appointed, as four of the six mem-

bers representing employers and employees on this "tripartite" committee, three officials of the ILGWU and the President of the United Knitwear Manufacturers League, a trade association made up of mainland companies in this industry. The Secretary made these four appointments despite the fact that both the ILGWU and the United Knitwear Manufacturers League were on record in favor of a minimum wage of \$1.25 an hour for this industry (the highest possible minimum under the Act), despite the fact that the ILGWU represents no more than 7-1/2% of the employees in this industry in Puerto Rico, despite the Secretary's past practice of not appointing three officials of the same union as employee representatives on an industry committee, despite the fact that the Secretary has appointed to other industry committees mainland employer members who have not been precommitted to a given minimum rate, and despite the fact that the appointment of these four members distorted the impartial role of the "disinterested" public members. In making these four appointments, the Secretary disregarded the statutory mandate that a minimum wage rate should be determined by an industry committee, after investigation and hearing, rather than by the Secretary or the Wage and Hour Administrator.

Further, the Committee, in excluding five of the petitioners as parties to its proceeding, relied upon an informal interpretative rule which had not been published in the Federal Register as required by law. As a result of this unlawful exclusion, doubt was cast upon the credibility of all eighteen petitioners' financial statements.

Moreover, the Secretary abused his discretion under Section 8(a) of the Act in that he ordered an additional wage review for this industry on the basis of grossly inaccurate and fragmentary economic data only nine months after a hearing had been held by a biennial review committee. The evidence which was presented to this industry committee did not justify the Secretary's ordering an additional wage review. This evidence demonstrated that

any increase in the industry's minimum wage would substantially curtail employment and would increase the growing competitive advantage enjoyed by the industry on the mainland. The Committee chose to disregard this evidence, and, as a result, its wage determination was not based on substantial evidence.

From the date this industry committee was established to the date its minimum wage recommendation was signed serious violations of applicable statutes and regulations occurred. Any or all of these violations require this Court to set aside the Secretary's minimum wage order.

### ARGUMENT

- I. The Secretary of Labor abused his discretion under Section 8(a) of the Act by ordering an additional wage review for the Puerto Rican Sweater and Knit Swimwear Industry during a biennial period.

Section 8(a) of the Act provides:

Minimum rates of wages established in accordance with this section which are not equal to the minimum wage rate prescribed in paragraph (1) of section 206(a) of this title shall be reviewed by such a Committee once during each biennial period, beginning with a biennial period commencing July 1, 1958, except that the Secretary, in his discretion, may order an additional review during any such biennial period.

On July 14, 1965, Mr. David Dubinsky, President of the International Ladies' Garment Workers' Union ("the ILGWU") testified before the Senate Labor Committee regarding proposed amendments to the Act. While speaking of wage reviews in Puerto Rico, he stated:

Let me tell you a secret now. There was one case particularly, a very important case, where they [the industry committee] had decided at no increase whatsoever. The union made a complaint. I understand another hearing is going to be arranged—although

hearings usually take place every 3 [*sic*] years—another hearing is going to take place.<sup>6</sup>

On August 13, 1965, Mr. Dubinsky's "secret" was proved to have been correct. On that date the Secretary of Labor established Industry Committee No. 75 to review the minimum wage rate in the Puerto Rican Sweater and Knit Swimwear Industry during a biennial period. 30 Fed. Reg. 10014 (1965). This was the only industry for which he ordered such a review. J.A. 66-68.

While the Secretary's discretion to order an additional wage review during a biennial period is not specifically limited in Section 8(a), the legislative history makes it abundantly clear that his discretion is not unlimited.

*A. Congress clearly intended additional wage reviews to be ordered by the Secretary only in extraordinary circumstances.*

In 1955 Section 8 of the Act was amended to provide for mandatory annual wage reviews in Puerto Rican industries paying less than the mainland minimum. Ch. 867, § 4, 69 Stat. 711 (1955). In 1958, this provision was replaced by the present last sentence to Section 8(a), requiring biennial reviews but permitting an additional review in the Secretary's discretion.

The 1958 amendment was adopted after experience had shown that the annual wage reviews made mandatory in 1955 were an intolerable burden and that ordinary economic changes from year to year did not justify their inconvenience and expense. The House Report stated:

[E]xperience under existing law has proven quite clearly that annual reviews of wage rates are not necessary, except in rare situations. Officials of the government of Puerto Rico, employers, and employee groups all agree that biennial reviews

<sup>6</sup> J.A. 67, *Hearings Before the Subcommittee on Labor of the Senate Committee on Labor and Public Welfare*, 89th Cong., 1st Sess., pt. 2 at 692 (1965).

of wage rates are more practical than annual reviews in that they will meet the needs of the nature and growth of industry in the islands in terms of stability, expansion, and the normal processes of collective bargaining.<sup>7</sup>

The Senate Report concurred:<sup>†</sup>

Experience . . . has indicated that this annual review of wage rates by industry committees has been burdensome on both employers and workers in Puerto Rico, who have had to adjust frequently to changes in rates, and it has been found that economic changes occurring from one year to the next, in general, do not provide a sufficient justification for an alteration in wage rates.<sup>8</sup>

In a letter supporting the proposed amendment, James T. O'Connell, then Under Secretary of Labor, endorsed these views: "[A] requirement of annual review is not only administratively burdensome, but is not justified by any probable change in economic conditions over so short a period."<sup>9</sup>

<sup>7</sup> H.R. Rep. No. 2235, 85th Cong., 2d Sess. 2 (1958).

<sup>8</sup> S. Rep. No. 2313, 85th Cong., 2d Sess. 1-2 (1958).

<sup>9</sup> Letter dated August 8, 1958 to Hon. Lister Hill, Chairman of the Senate Labor Committee. S. Rep. No. 2313, 85th Cong., 2d Sess. 2 (1958).

The Labor Department's Annual Report for 1960 stated: "The 1958 amendment has the desirable consequence of eliminating the unsettling effects of a too-frequent review. . . ." 48 Dep't of Labor Ann. Rep. 245 (1960).

Referring to the 1955 provision in testimony before a Congressional committee in 1962, Mr. Dubinsky declared, "That was an amendment that existed only 2 years because everybody recognized and the unions supported that it should be eliminated, because you cannot change scales every year and employers don't know how to plan their business." *Hearings Before the Ad Hoc Subcommittee on Investigation of the Garment Industry of the House Committee on Education and Labor*, 81st Cong., 2d Sess. 213 (1962).

It is thus clear that Congress intended the Secretary to adhere to the biennial pattern of wage review in all but extraordinary circumstances. As demonstrated below, no such circumstances existed to support the Secretary's decision to single out the Puerto Rican Sweater and Knit Swimwear Industry for an additional review during the present biennium.

*B. The Secretary's decision to order an additional wage review for the Puerto Rican Sweater and Knit Swimwear Industry was based upon grossly inaccurate and fragmentary economic data, and it was not justified by extraordinary circumstances.*

The Secretary's Administrative Order establishing Industry Committee No. 75 stated that an additional wage review was ordered for the Sweater and Knit Swimwear Industry "in consideration of changes in economic conditions . . . ." 30 Fed. Reg. 10014 (1965). Although this order did not specify these "changes," any significant economic changes would have to be reflected in the volume of sweater shipments, in employment, or in profits. When the Secretary exercised his discretion, he had available to him shipment and employment data for only the first five months of 1965. J.A. 68. These data, however, were grossly inaccurate. In addition, he had no current data regarding the industry's profits. Corrected shipment and employment data, as well as profit data, which were made available to the Secretary prior to the convening of Industry Committee No. 75, conclusively demonstrated that an additional wage review for this industry was not justified.

(a) Volume of Shipment Data.

The last two months for which shipment figures were available were April and May, 1965.<sup>10</sup> The April figures

<sup>10</sup> The shipment figures for April and May, 1965, which were available to the Secretary when he ordered an additional wage

indicated that 46,000 dozen sweaters had been shipped from Puerto Rico to the mainland during that month, compared with 16,000 dozen in April, 1964. The May figures showed that 113,000 dozen sweaters had been shipped during that month compared with 50,000 dozen in May, 1964. The shipment figure for May, 1965, the most recent month then available to the Secretary, not only showed an increase of 126% over the previous year, but was the largest monthly total in the history of the industry. J.A. 68.

The April and May, 1965 figures were, however, grossly inaccurate and respondents knew they were grossly inaccurate before Industry Committee No. 75 convened.<sup>11</sup> Prior to the public hearing, the Customs Bureau reviewed and revised these figures to show shipments of only 27,000 dozen sweaters during April, 1965 and only 36,000 dozen sweaters during May (a 28% decrease from May, 1964). J.A. 206-08. Indeed, the correct figures showed that shipments for the first five months of 1965 were actually 6% less than for the first five months of 1964.

#### (b) Employment Data

The employment data available to the Secretary when he ordered an additional wage review were also inaccurate. They indicated that May, 1965 employment was 2,509, rather than the correct figure of 2,404. J.A. 170. Moreover, the Secretary should not have ignored the fact that, while the revised figure of 2,404 showed an increase from May, 1964 and May, 1963, it showed a decline in employment of 7% from May, 1962, 2% from May, 1961,

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review, were included in the Economic Report prepared for Industry Committee No. 75 by the Wage and Hour Division of the Department of Labor in September, 1965. J.A. 165.

<sup>11</sup> The first supplement to the Wage and Hour Division's Economic Report, published in October, 1965, acknowledged that the shipment data for the first six months of 1965 were inaccurate. J.A. 169.

and 3% from May, 1959. J.A. 212. Clearly these data did not reveal such an extraordinary change as to justify an additional wage review.

Prior to the convening of Industry Committee No. 75, the Secretary knew that the sweater shipment data were inaccurate. J.A. 169. He also knew that the employment data were inaccurate.<sup>12</sup> In view of Congress' express intent to avoid annual wage reviews except in extraordinary circumstances, the Secretary should have revoked his order for an additional wage review as soon as these inaccuracies became apparent.

(c) Profit Data.

The Secretary made no attempt to obtain profit and loss statements from companies in the Puerto Rican Sweater and Knit Swimwear Industry prior to ordering an additional wage review. Had he done so, he would have discovered that petitioners' operating profits had diminished in absolute amounts from \$717,312 in 1962 to \$306,341 in 1964 (J.A. 47), and that they had declined from 4% of sales in 1962 to 1.6% in 1964 J.A. 52 .<sup>13</sup>

The arbitrariness of the Secretary's decision to single out the Sweater and Knit Swimwear Industry for an additional wage review is further demonstrated by data relating to other Puerto Rican industries and to this industry on the mainland, which data were available to the Secretary at the time of his decision. He knew that the indus-

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<sup>12</sup> The figures for August 15, 1964, May 15, 1965, and August 15, 1965, which were incorrectly stated in the first supplement to the Wage and Hour Division's Economic Report published in October, 1965 (J.A. 170) were corrected by a second supplement distributed at the hearing on November 8 (J.A. 212).

<sup>13</sup> Five of the eighteen petitioners end their fiscal years on June 30. J.A. 51. Thus the annual figures include, with respect to those five petitioners, operations during the first six months of the following calendar years. J.A. 51-53.

try's minimum wage was higher than that in all other garment or textile industries in Puerto Rico, except the mattress and pillow classification of the Textile and Textile Products Industry. Wages and Hours Release No. 65-1066 (May 5, 1965). He knew, or should have known, that of ninety-five industries promoted by the Puerto Rican Economic Development Administration, sweater knitting mills ranked eighty-fifth in total profits in 1963. J.A. 218-21.<sup>14</sup> By contrast, the 1963 profit as a per cent of sales figures for two related Puerto Rican industries-brassieres and accessories, and girdles and corsets—were 13.1% and 9%, respectively, although their minimum wage is currently only \$1.12-1/2 an hour. J.A. 219. Wages & Hours Release No. 65-1066 (May 5, 1965).

Finally, the Secretary knew that the production of sweaters in Puerto Rico as a percentage of production in the fifty United States decreased from 4.6% in 1960 to 3.8% in 1964, and that employment had risen markedly in this industry on the mainland during this period. J.A. 50, 171. There was thus no conceivable indication of a competitive advantage on the part of the Puerto Rican industry over the mainland industry.

In summary, the extraordinary circumstances required by Congress to justify the burden and expense of an additional wage review had not occurred in the Puerto Rican Sweater and Knit Swimwear Industry. The "changes in economic conditions," which the Secretary stated he considered in deciding to establish Industry Committee No. 75, were revealed to him by grossly inaccurate and incomplete economic data. Such changes as had occurred since the 1964 biennial wage review evidenced a deterioration, rather than an improvement, when compared with

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<sup>14</sup> The Annual Statistical Report of EDA Manufacturing Plants, 1963-64 Edition, is the most recent available comparative study. It was made public in July, 1965, a month before the Secretary announced his decision to order an additional wage review for this industry.

the industry's past experience, with similar industries in Puerto Rico, or with this industry on the mainland. Thus, in ordering an additional wage review for this industry, the Secretary ignored the clear purpose of the 1958 biennial review amendment to Section 8(a) of the Act. He thereby imposed the very burdens which Congress had sought to avoid. Accordingly, the wage rate recommended by Industry Committee No. 75 should be set aside.

- II. Respondents violated Sections 5(b) and 8(b) of the Act in appointing to Industry Committee No. 75 four members representing organizations which were on record in support of the highest possible minimum wage rate for the industry.

Section 5(b) of the Act provides:

*An industry committee . . . shall include a number of disinterested persons representing the public, one of whom the Administrator shall designate as Chairman, a like number of persons representing employees in the industry, and a like number representing employers in the industry. In the appointment of the persons representing each group, the Administrator shall give due regard to the geographical regions in which the industry is carried on. (Emphasis added.)*

Section 8(b) of the Act provides:

Upon the convening of any such industry committee, the Administrator shall refer to it the question of the minimum wage rate or rates to be fixed for such industry. The industry committee shall investigate conditions in the industry and the committee, or any authorized subcommittee thereof, shall after due notice hear such witnesses and receive such evidence as may be necessary or appropriate to enable the committee to perform its duties and functions under this chapter. The committee shall recommend to the Administrator the highest minimum wage rates for the industry which it determines, having due regard to economic and competitive conditions, will not substantially curtail employment in the industry, and will not give any

industry in Puerto Rico or in the Virgin Islands a competitive advantage over any industry in the United States outside of Puerto Rico and the Virgin Islands.

As the three "persons representing employees in the industry," respondents appointed two officers of mainland locals affiliated with the ILGWU (Emile J. DeLeo and Joseph Schwartz) and an ILGWU international vice-president (Alberto E. Sanchez), although employees in only one of the nineteen companies in the Puerto Rican Sweater and Knit Swimwear Industry had chosen the ILGWU to represent them. J.A. 151-52, 65. Never before, in this or any other industry, had respondents appointed three officials of the same union as the employee representatives on a Puerto Rican industry committee.

As one of the three "persons representing employers in the industry," respondents appointed Herbert Alper, the president of a mainland sweater company.<sup>15</sup> Mr. Alper is also president of the United Knitwear Manufacturers League, a trade association which is composed of mainland companies directly competing with the Puerto Rican Sweater and Knit Swimwear Industry. App. B, 3. Moreover, Mr. Alper's trade association bargains with employee member DeLeo's local of the ILGWU with respect to wages, hours, and working conditions. J.A. 151, 65, 157.

At the time respondents selected the above four appointees, both the ILGWU and the United Knitwear Manufacturers League, the latter through Mr. Alper himself, were on record as favoring a minimum wage rate of \$1.25 an hour for the Sweater and Knit Swimwear Industry in Puerto Rico. J.A. 65, App. A, 1, App. B, 3.

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<sup>15</sup> The other two employer representatives were Leon Atkind and Frank Titelman, presidents of Puerto Rican companies in this industry. J.A. 151.

- A. *The Act provides and Congress clearly intended that industry committees base their wage determinations on facts elicited by investigation and public hearing.*

The provisions for wage adjustment by industry committees, and other provisions of the Fair Labor Standards Act, were "written around the conference table" in the spring of 1938.<sup>16</sup> The conference bill which was finally enacted resolved a particularly controversial question—whether wages and hours should be determined by an administrative agency or fixed by Congress.<sup>17</sup> This bill struck a balance by fixing a scale of minimum wages to be implemented over a period of years. Ch. 676, § 6(a), 52 Stat. 1062 (1938). Tripartite industry committees were given authority to recommend higher minimum rates and to classify industries for wage and hour purposes. Ch. 676, §§ 8(b), (c), 52 Stat. 1064 (1938). A newly-created Administrator of a Wage and Hour Division in the Department of Labor was authorized to make effective or reject the committees' recommendations after notice and hearing, but was given no power to modify them. Ch. 676, § 8(d), 52 Stat. 1064 (1938). The purpose of the tripartite committee procedure was explained by Senator Thomas as follows:

<sup>16</sup> 83 Cong. Rec. 9256 (1938) (remarks of Congresswoman Norton). Congressman Keller stated, "Out of the separate bills which have been previously passed by the House and Senate and sent to conference a new bill has been written." 83 Cong. Rec. 9264 (1938).

<sup>17</sup> The original Black-Connery bills would have created a Fair Labor Standards Board with authority to set minimum fair wages and maximum fair hours. S. 2475, 75th Cong., 1st Sess. § 5 (1937); H.R. 7200, 75th Cong., 1st Sess. § 5 (1937). On the other hand, a bill introduced by Congressman Griswold at the behest of the AFL would have prohibited employment of any person in interstate commerce at a wage of less than forty cents an hour or for more than eight hours a day or forty hours a week. 82 Cong. Rec. 1591-92 (1937).

Once the necessity of some flexibility was recognized, there arose the problem of devising the administrative machinery necessary to provide this flexibility. Inasmuch as there had been some criticism of the powers conferred upon a single board by the Senate bill, it was agreed that the powers of the administrative agency should be more definitely defined. We decided therefore to authorize the administrative agency to act only upon the recommendations of an industry committee, one-third of whose members should be selected to represent the employers, another third to represent the employees, and the other third to represent the general public, with due regard being given to geographical considerations in their selection. 83 Cong. Rec. 9164 (1938).

The debate on the conference bill emphasized that the virtue of the tripartite scheme would be careful investigation and evaluation of all the economic facts. For example, Senator Thomas stated:

[This procedure] insures that no minimum rate shall be established by administrative action that has not been carefully worked out by a committee principally drawn from the industry itself. 83 Cong. Rec. 9164 (1938).<sup>18</sup>

To insure that all pertinent facts would be available, the industry committees were given subpoena power to compel attendance of witnesses and production of books, papers, and documents. Section 9 of the Act, 29 C.F.R. § 511.8(b) (1965).

<sup>18</sup> Congressman Keller declared "[T]he industrial board which [the Administrator] will appoint for each industry will be democratically representative. Each board will contain an equal number of public, labor, and business members. They are not governed by arbitrary rules . . . but will proceed to examine into the facts and circumstances in each industry, into the wages and living conditions of its labor, hold hearings at which all interested parties will have an opportunity to appear, testify, and give their opinions. Upon the factual record of these hearings the board will make findings of fact and recommendations to the Administrator." 83 Cong. Rec. 9264 (1938).

Although a 1949 amendment to the Act eliminated the industry committee procedure for the mainland United States, it retained the industry committee procedure for Puerto Rico. Ch. 736, § 8, 63 Stat. 915 (1949). Congress in effect reaffirmed its intent that industry committee wage recommendations be based on a careful consideration of the facts obtained through investigation and hearing.

*B. Respondents' appointment of Messrs. Alper, DeLeo, Schwartz, and Sanchez to the Committee was an unlawful preemption of the Committee's statutory responsibility to determine minimum wages for this Industry.*

In 1955, the Puerto Rican industry committee provisions of the Act were amended to eliminate the Administrator's power to review committee recommendations. The Secretary was henceforth required to publish industry committee recommendations in the Federal Register, and such recommendations become legal rates fifteen days after publication unless stayed by the appropriate federal circuit court of appeals. Ch. 867, § 5(d), 69 Stat. 711 (1955), 29 C.F.R. § 511.18 (1965), Section 10 of the Act.

Thus Sections 5 and 8 of the Act, as amended, separate the ministerial functions of the Secretary and the Administrator from the substantive wage-determining functions of industry committees. The Secretary and Administrator appoint the members of industry committees, publish regulations governing their procedures, provide administrative assistance and economic data, and publish the committees' wage recommendations. On the other hand, the industry committees investigate economic conditions, hear, receive, and evaluate evidence, and recommend the minimum wage rates which the Secretary is required to publish.

Inasmuch as Congress has delegated sole responsi-

bility for determining minimum wages to tripartite industry committees, the composition of such committees is critically important.

Section 5(b) of the Act, quoted above, provides for appointment of "disinterested persons representing the public" and an equal number of employer and employee members. Obviously, neither the employer nor the employee members are expected to be "disinterested" or non-partisan. Their divergence of views, reflecting the economic interests of their constituents, is a vital element of tripartitism. Of paramount importance, however, is the impartial role of the "disinterested" public members, a majority of whom can normally be expected to cast the decisive votes. It is they who must bear primary responsibility for thoroughly investigating the economic facts and carefully weighing the statutory standards in determining the minimum rates.

The tripartite scheme can function properly only when opposing economic interests in an industry are equally represented on that industry's wage-determining committee. When opposing economic interests are not equally represented, the role of the disinterested public members is seriously distorted. If, on a committee of nine, four partisan members represent a single economic interest, one public member can nullify the impartial judgment of the other two public members by voting with the four partisans. Indeed, if opposing economic interests need not be equally represented, respondents could appoint five partisan members who represent a single economic interest, thereby nullifying the impartial judgment of all three public members.

In short, when respondents appoint an unbalanced committee, the committee's wage determination is more likely to reflect the economic interests of its partisan members than an independent investigation and evaluation of all the facts. To the extent that respondents knowingly create such a situation, they directly influence the com-

mittee's decisions, thereby abrogating the Act's separation of ministerial and substantive functions. In so doing, respondents undercut the committee's statutory responsibility to set minimum wage rates only after investigation and hearing.

The proceedings of Industry Committee No. 75 dramatically illustrate what can happen when respondents unlawfully exercise their appointment power to influence the deliberative process. When this Committee was appointed, four of its nine members were known to respondents to be committed to the highest possible minimum rate for the Puerto Rican Sweater and Knit Swimwear Industry. These four members, Messrs. Alper, DeLeo, Schwartz, and Sanchez, were only one vote short of forming a majority. At the Committee's executive session on November 10, 1965, they tested their strength by proposing and voting for a \$1.25 rate. When it became apparent that public member Horlacher favored no change in the current rate and that public members Yagoda and Villaronga favored not more than a three-cent increase, Messrs. Alper, Schwartz, and Sanchez joined Messrs. Yagoda and Villaronga in voting for the three-cent increase to \$1.20. When the Committee reconvened two days later to sign its Report, public member Yagoda changed his mind and proposed a \$1.22 rate. Chairman Horlacher ruled this motion to set a higher rate out of order. Thereupon Messrs. Alper, Schwartz, and Sanchez, joined now by Mr. DeLeo, successfully challenged the Chairman's over ruling of Mr. Yagoda's proposal. Together with Mr. Yagoda, they then formed the majority voting for the new \$1.22 rate. *Had opposing economic interests within the industry been evenly balanced on Industry Committee No. 75, the \$1.22 rate could not have been adopted.*

Respondents could have balanced opposing economic interests on this Committee in a number of ways. They might have appointed an employer member from a main-

land industry other than sweaters and knit swimwear.<sup>19</sup> Or they might have appointed an uncommitted employer from the mainland sweater and knit swimwear industry. In fact, respondents have appointed uncommitted mainland industry representatives to industry committees reviewing the minimum wages of other Puerto Rican industries. In no event should respondents have appointed as an employer member of this Committee a mainland employer who was precommitted to a view identical to that of all three employee members, and who bargains with the union whose officials were appointed as the three employee members.

Respondents might also have balanced opposing economic interests by appointing as an employee member a representative of petitioners' non-union employees, who constitute approximately 93 percent of all employees in the industry. Or respondents might have appointed a person such as Mr. Prudencio Rivera-Martinez, former Commissioner of Labor for Puerto Rico, who has served as an employee member of numerous other industry committees during the past two years.<sup>20</sup> The judgment of a person such as Mr. Rivera-Martinez would have been in-

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<sup>19</sup> Ample precedent supports such appointments. In 1965, for example, Mr. Aleck H. Stein, President, Stein-Sulkis Shoe Co., Haverhill, Mass. served as a mainland industry representative on industry committees reviewing the minimum wage rates in the Rubber Products Industry, the Chemical, Petroleum, and Related Products Industry, and the Lumber and Wood Products Industry. U.S. Dep't Lab. Press Release No. 203 (Jan. 16, 1965). Mr. Max J. Miller, Vice President, Lerner Stores Corp., New York, N. Y., served as a mainland industry representative on industry committees reviewing the minimum wage rates in the Electrical, Instrument, and Related Products Industry, the Metal, Machinery, Transportation Equipment, and Allied Products Industry, and the Fabricated Plastic Products Industry. U.S. Dep't Lab. Press Release No. 214 (March 27, 1965).

<sup>20</sup> U.S. Dep't Lab. Press Releases Nos. 172, 203, 222 (Aug. 15, 1964, Jan. 16, 1965, June 10, 1965).

dependent of the ILGWU's commitment to the highest possible minimum wage and would have more adequately reflected the interest of the Puerto Rican employees in a minimum wage which would not substantially curtail their employment.

In summary, we have seen that Congress intended the wage recommendations of industry committees to be based on facts elicited by investigation and public hearing, that Sections 5 and 8 of the Act require a complete separation of the Secretary's ministerial functions from the substantive functions of industry committees, and that the Act makes respondents responsible for preserving the integrity of the tripartite scheme by balancing opposing economic interests on each industry committee. By appointing to Industry Committee No. 75 four members representing organizations already on record in support of the highest possible rate, respondents violated Sections 5(b) and 8(b) of the Act, made a mockery of the Committee's investigation and hearing, and unlawfully preempted the Committee's wage-determining responsibilities. The \$1.22 rate should therefore be set aside.

**III. Industry Committee No. 75 unlawfully excluded five petitioners as parties to the Committee's proceedings on the basis of an unpublished interpretative rule.**

29 C.F.R. § 511.8(b) provides, in part:

Any interested person who wishes to participate on his own behalf or by counsel shall file a written prehearing statement. . . . The prehearing statement shall describe the person's interest in the proceeding and shall contain . . . (3) the written data he proposes to introduce in evidence, including all *tangible objective data to be submitted pursuant to § 511.13. . . .*

*If the prehearing statement is in conformity with the above requirements, the person shall have the right to participate as a party.* (Emphasis added.)

29 C.F.R. § 511.13 provides, in part:

Testimony on behalf of an employer or group of employers as to inability to pay the minimum wage rate specified in section 6(a)(1) . . . or as to inability to adjust to a higher minimum wage rate than prescribed by any applicable wage order of the Secretary, shall be supported by tangible objective data filed as part of the prehearing statement under § 511.8, *including pertinent unabridged profit and loss statements and balance sheets* for a representative period of years for the individual firm or firms involved. (Emphasis added.)

Audited financial statements for all eighteen petitioners were submitted as part of petitioners' prehearing statement on October 15, 1965. Ex. 13, pp. X1-X358. These financial statements were virtually identical in form to those submitted to and accepted by industry committees conducting biennial wage reviews in 1962 and 1964, and by the Secretary of Labor and industry committees in 1961 and 1963 under a similar regulation governing "hardship appeals." J.A. 55-57.<sup>21</sup>

Only four days prior to the commencement of Industry Committee No. 75's hearing, petitioners' counsel received a letter from the Committee's counsel alleging deficiencies in several of the financial statements submitted by petitioners. J.A. 214-15, 56-57. In sending this letter, Committee counsel ignored the fact that identical financial statements had been accepted by the Secretary and by previous industry committees. He also ignored the fact that his objections were the same as objections which had previously been made by the ILGWU and that these objections had been overruled by earlier

<sup>21</sup> The 1961 amendments to the Act provided for automatic two-step increases in wage order rates for each of the industries in Puerto Rico, but permitted industries to appeal for relief from these increases under certain circumstances. Section 6(c)(C) of the Act. 29 C.F.R. § 512.7(b) (1965) required these appeals to be supported by "pertinent, unabridged profit and loss statements and balance sheets. . . ."

committees, presumably with the advice of committee counsel. J.A. 56.

When Industry Committee No. 75 convened in executive session on November 8, 1965, Committee counsel recommended that Finetex, Inc., Gurabo Knitting Mills, Inc., Sigo Corp., and Textile Dye Works, Inc., companies which had been named in his letter, and also Yauco Super-Knits, Inc., which had not been previously named, be excluded as parties to the Committee proceedings. The Committee approved Committee counsel's recommendation. J.A. 8-10, 43, 57, 62.

Committee counsel stated at the hearing that he "had no choice" in recommending exclusion of the five petitioners on the basis of a letter, dated August 24, 1964, from the Administrator to the Research Director of the ILGWU.<sup>22</sup> J.A. 57. Petitioners had no notice of the existence or contents of this letter prior to November 8, 1965, the day the hearing commenced. J.A. 57-58.

*A. The Administrator's interpretation of the terms "pertinent" and "unabridged," upon which the Committee relied, should have been published in the Federal Register.*

Under Sections 511.8(b) and 511.13, quoted above, employers wishing to testify that they are unable to adjust to a higher minimum wage rate must submit "*pertinent unabridged*" profit and loss statements and balance sheets to the industry committee. In accepting petitioners' financial statements, the previous committees had read the terms "pertinent" and "unabridged" together, construing them to require submission of certified profit and loss statements and balance sheets which were relevant to the Committees' wage reviews. J.A. 58. The

<sup>22</sup> 29 C.F.R. § 511.7 (1965) provides that "Committee counsel shall advise the committee on the issues of law, including interpretations of these regulations . . . which arise during the committee proceedings."

Administrator's August 24, 1964 letter, however, construed these terms quite differently:

*It is our opinion that . . . the "pertinent" documents are those which relate to the firms to which the testimony relates. In other words, the required profit and loss statements and balance sheets must be those of the firms claimed in the testimony to be unable to adjust to the higher wage rate, regardless of their status in the proceedings or their relationship to the parties. . . . We consider the term [unabridged] . . . to refer to profit and loss statements and balance sheets that are prepared in accordance with accepted accounting practices in the usual course of business for the information of stockholders and others concerned with operations of the business, in the complete form in which such documents are prepared by the firm's accountants without any deletions therefrom or other abridgement. Schedules, comments, notes and certifications which the accountants made a part of the profit and loss statement or balance sheet as prepared by them may not, of course, be omitted, for this would constitute an abridgment. J.A. 225-26, emphasis added.*

According to the Administrator's private communication to the ILGWU Research Director, the term "pertinent" describes "firms," rather than "profit and loss statements and balance sheets," and the term "unabridged"—standing by itself—precludes omission of any schedule, note, or comment, regardless of its lack of relevance to the wage review.

Section 305 of The Federal Register Act, 44 U.S.C. § 305 (1965), provides, in part:

(a) There shall be published in the Federal Register . . . (3) such documents or classes of documents as may be required so to be published by Act of the Congress. . . .

Section 3(a) of the Administrative Procedure Act, 5 U.S.C. § 1002(a) (1965); ("the APA") provides in part:

Every agency shall separately state and currently publish in the Federal Register . . . (3) substantive

rules adopted as authorized by law and statements of general policy or interpretations formulated and adopted by the agency for the guidance of the public, but not rules addressed to and served upon named persons in accordance with law.

Section 5(c) of the Fair Labor Standards Act gives the Administrator authority to prescribe "rules and regulations governing the procedure of industry committees." It does not, however, give him authority to issue private advisory opinions (for example, to the Research Director of the ILGWU) within the exception in APA Section 3(a)(3) for "rules addressed to and served upon named persons in accordance with law." Nor do the regulations make any provision for the issuance of informal interpretations.

The Administrator's letter was unquestionably either a "rule" or a "statement of general policy or interpretation formulated and adopted by the agency for the guidance of the public" within the meaning of APA Section 3(a).<sup>23</sup> In that letter, the Administrator interpreted two terms in his regulation, "pertinent" and "unabridged," in a manner which differed substantially from the interpretation previously given those terms by industry committees. Since Committee counsel (J.A. 57) and Industry Committee No. 75 deemed themselves bound by "the regulations as authoritatively interpreted" (J.A. 62), publication of

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<sup>23</sup> The Administrator's letter clearly fits the definition of "rule" set forth in APA § 2(c), 5 U.S.C. § 1001(c) (1965): "'Rule' means the whole or any part of any agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or to describe the . . . procedure . . . requirements of any agency, and includes the . . . prescription for the future of . . . wages . . . or practices bearing upon any of the foregoing." The Administrator is, of course, an "agency" within APA § 2(a), 5 U.S.C. § 1001(a) (1965): "'Agency' means each authority . . . of the Government of the United States other than Congress, the courts, or the governments of the possessions, Territories, or the District of Columbia." 29 C.F.R. § 511.13 (1965) is a regulation governing industry committee procedures, prescribed by the Administrator under the authority of Section 5(c) of the Act.

the new interpretations was made mandatory by Section 3(a) of the APA and Section 305 of the Federal Register Act.

*B. Because the Administrator's interpretation was not published in the Federal Register, it was not binding on either Committee counsel or the Committee.*

Committee counsel was clearly wrong in stating that he had "no choice" in recommending exclusion of five petitioners on the basis of the Administrator's letter.

Section 307 of the Federal Register Act, 44 U.S.C. § 307 (1965), provides in part:

No document required under section 305(a) of this title to be published in the Federal Register shall be valid as against any person who had not had actual knowledge thereof until the duplicate originals or certified copies of the document shall have been filed with the Division and a copy made available for public inspection as provided in section 302 of this title. . . .

Those who are entitled to participate in proceedings conducted by a federal agency are also entitled to know in advance of any change in the rules governing their participation. The five petitioners excluded as parties had no knowledge of the new interpretation set forth in the Administrator's letter prior to Industry Committee No. 75's public hearing. J.A. 57-58. Under Section 307 of the Federal Register Act, the letter was therefore invalid as to them. Committee counsel should not have relied upon the letter in recommending that the five petitioners be denied participation as parties in the Committee proceedings, and in any event the Committee should not have followed his recommendation. As the Court held in *Hotch v. United States*, 212 F.2d 280, 283 (9th Cir. 1954):

While the Administrative Procedure Act and the Federal Register Act are set up in terms of making information available to the public, the Acts are more than mere recording statutes whose

function is solely to give constructive notice to persons who do not have actual notice of certain agency rules. *The Acts set up the procedure which must be followed in order for agency rulings to be given the force of law. Unless the prescribed procedures are complied with, the agency (or administrative) rule has not been legally issued, and consequently it is ineffective.* (Emphasis added.)<sup>24</sup>

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- C. *The Committee's unlawful exclusion of five petitioners as parties to its proceedings prejudiced all eighteen petitioners by casting doubt upon the credibility of their financial statements.*

The unlawful exclusion of five petitioners as parties on the ground that they failed to submit "pertinent unabridged" financial statements necessarily reflected adversely upon all eighteen petitioners' contention that they would be unable to adjust to a higher minimum wage rate. If an inference of withholding vital information was not drawn by the Committee at the outset, it was drawn for the Committee, on several occasions, by the witness for the ILGWU. Commenting upon the alleged abridgment of petitioners' financial statements, he stated:

The regulation to which Mr. Cooper refers, Section 511.13, is quite old. And no question about it, a number of committees treated offenders under Section 511.13 kindly, the same way as criminal courts at times treat first offenders in a more kindly fashion than habitual criminals. I am not

<sup>24</sup>In *Hotch*, the defendant had been convicted of violating a Department of Interior regulation extending the period closed to fishing on the Taku Inlet in Alaska. On rehearing, his conviction was reversed by the Ninth Circuit Court because the regulation had not been published in the Federal Register. The United States then petitioned for a second rehearing, contending that publication was not required inasmuch as the defendant had actual notice of the extended closed period. The Court denied this petition for the above-quoted reason. See *Graham v. Lawrimore*, 185 F. Supp. 761, 763-64 (E.D.S.C. 1960), *aff'd per curiam*, 287 F.2d 207 (4th Cir. 1961); *United States v. Morelock*, 124 F. Supp. 932, 944 (D. Md. 1954).

suggesting any criminality involved here. But I pray, as a party to this proceeding, that I am deprived, just as the committee is deprived, of information which the regulations entitle me to have several days before this hearing begins. J.A. 63-64.

He added:

I have spent the week-end analyzing these data, just as the Government economists analyzed this data beforehand. Neither they nor I had the information to which we were entitled under the regulations. This is an abridgment. This is a conversion of an objective document into a subjective document. *It means that Mr. Cooper and his clients can decide what they will let a committee see or what they will not let it see.* J.A. 64, emphasis added.<sup>25</sup>

The consequences of the Committee's reliance upon the Administrator's private communication to the Research Director of the ILGWU are, of course, incalculable. At the very least it unlawfully deprived five companies of rights granted them by respondents' regulations and tainted the Committee's deliberations to the prejudice of all eighteen petitioners. Accordingly, the wage rate recommended by the Committee must be set aside.

IV. By adopting the \$1.22 minimum wage rate at a meeting called for another purpose, Industry Committee No. 75 violated the regulations governing the Committee's procedures.

At the Committee's executive session on the afternoon of November 10, employee member Schwartz moved to adopt a minimum wage rate of \$1.25 an hour. This motion was supported by Messrs. Alper, DeLeo, and Sanchez, the other three members who were committed to the \$1.25 rate, but it failed for lack of a fifth vote. Mr. Atkind, seconded by Mr. Titelman, moved to retain the \$1.17 rate. This motion also failed. J.A. 15.

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<sup>25</sup> See also J.A. 144-45.

Public member Yagoda then made three separate motions to approve a rate of \$1.20. His motion twice failed to win a majority. The third time it carried by a vote of five to four, Messrs. Yagoda, Villaronga, Alper, Schwartz, and Sanchez in favor; Chairman Horlacher and Messrs. Atkind and Titelman were opposed, as was Mr. DeLeo. J.A. 15 - 16. After this vote was recorded in the minutes, the Chairman adjourned the meeting, stating that the Committee would meet again on the morning of November 12 "for the purpose of editing a draft Report and Findings of Fact prepared by the staff economist in the light of the Committee's action in recommending a \$1.20 rate and for the purpose of signing the Report and Findings of Fact." App. C, 6, J.A. 16

When the Committee assembled on November 12, members Atkind and Titelman were absent. Public member Villaronga appeared briefly, but felt ill and left. J.A. 17, 25-26. The Chairman presented a draft of the Committee Report and, after some discussion, several textual changes were approved. J.A. 17-18, 21-22. Public member Yagoda then moved that the Report be changed so as to increase the recommended wage rate to \$1.22. J.A. 18, 23. The Chairman ruled this motion out of order stating:

The motion that has been made and seconded, in the opinion of the Chair, is a motion not merely to change the draft of the report before the committee, which draft was drawn up on the basis of the committee's action on Wednesday, but is in essence a motion to reconsider the determination of the wage by this committee. Construing the motion to be this, that the committee under this motion is asked to reconsider the determination made on Wednesday, it is the opinion of the Chair, and the Chair so rules, that this motion is inappropriate.

MR. ALPER: Pardon. I did not hear that.

CHAIRMAN HORLACHER: This motion is inappropriate and improper, in view of the fact that today's meeting of the committee was convened

for the purpose of reviewing this draft report and making such modifications in it as seem appropriate and signing it, and not for the purpose of any reconsideration of the wage which was fixed by action of the committee on Wednesday.

In this connection I call the attention of the committee to the regulations, Title 29 of the Code of Federal Regulations, Section 511, or Part 511. Section 511.12(b) reads as follows:

"A committee may adjourn its meeting or hearing, or both, from time to time, and meet again, at hearing or otherwise, pursuant to the terms of adjournment, or on call of its chairman or the Administrator."

It is my interpretation that under this paragraph of the regulations as applied to the facts, that today's meeting, if it were to consider the question of redetermination, if it were to reopen the question of the wage determination, would not be a meeting pursuant to the terms of adjournment, which were that the committee would adjourn and sit today for purposes of the formality of approving and signing the report, and that the meeting for this purpose of reconsidering the wage determination is not being held for that purpose, on the call of its chairman or the Administrator.

The Chair would like to point out that although there were seven members of the committee present when the session began, one of the public members, Mr. Villaronga, has left the room because of illness, and that two of the employer members of the committee were not present at the beginning of the meeting and are, of course, not present now, Mr. Titelman and Mr. Atkind.

The Chair would like to observe further that he would not in any case wish to assume sole responsibility for the procedural modification in proceedings of this committee as represented by the motion." J.A. 24-26.

Employee member Schwartz thereupon challenged the Chairman's ruling. J.A. 18, 27. There then followed a discussion of the ruling in light of the absence of three Committee members. In the course of discussion, pub-

lic member Yagoda moved that "this Committee have an interim adjournment for the purpose of being reconvened as soon as practically possible with the full participation of the Committee to conclude the business before us." His motion lost for lack of a second. J.A. 19, 33.

Finally, the Department of Labor's Regional Attorney, "at the request of the Committee, commented upon the importance of having complete attendance of the Committee." J.A. 19. He cautioned about the possible impediment presented by Section 511.12(b) of the regulations, and "indicated that, figuratively speaking, the Department would like to 'dot every 'i' and cross every 't'.'" J.A. 20. He stated:

I can only conclude my comments . . . by saying that the Department would very much like to see a full complement of the committee present for the continuation of deliberations and voting. These are our strongest recommendations to the committee. J.A. 36.

A majority of the Committee, Messrs. Yagoda, Alper, DeLeo, Schwartz, and Sanchez, nevertheless voted to overrule the Chairman's ruling that public member Yagoda's motion was out of order. J.A. 39-40. Public member Yagoda's motion to change the minimum wage rate to \$1.22 then carried by a vote of five to one, Messrs. Yagoda, Alper, DeLeo, Schwartz, and Sanchez in favor, Chairman Horlacher opposed, Messrs. Titelman, Atkind, and Villaronga absent. J.A. 20, 40.

The Chairman was correct in his ruling that the November 12 motion to change the Committee's November 10 rate was out of order. Section 511.12(b) of the governing regulations expressly states that an industry committee may "from time to time . . . meet again," provided the meeting is held "pursuant to the terms of adjournment, or on call of its chairman or [on call of the Wage and Hour] Administrator." 29 C.F.R. § 511.12(b) (1965). When the Committee adjourned on November 10, the Chairman specifically spelled out the terms of that ad-

journalment, stating that the Committee would meet again on November 12 "for the purpose of editing a draft Report and Findings of Fact prepared by the staff economist in the light of the Committee's action in recommending a \$1.20 rate and for the purpose of signing the Report and Findings of Fact." App. E, 6, J.A. 16. Neither any Committee member nor any Labor Department employee suggested at any time that these were not in fact the terms of the Committee's November 10 adjournment. Under Section 511.12(b), without a special call from the Chairman or the Wage and Hour Administrator, these terms limited the scope of the Committee's legitimate action at its meeting on November 12.<sup>26</sup>

It is a well-established principle that "Agency action that substantially and prejudicially violates the agency's rules cannot stand." *Sangamon Valley Television Corp. v. United States*, 106 U.S. App. D.C. 30, 33, 269 F.2d 221, 224 (D.C. Cir. 1959).<sup>27</sup> Minimum wage determinations under the Act are collective decisions which require careful and orderly procedures. In evaluating ec-

<sup>26</sup> A chairman's interpretation of a regulation is, of course, not always beyond challenge by a committee majority. 29 C.F.R. § 511.9 (1965). But where, as here, the Chairman's ruling accords with the express mandate of a regulation, it cannot be set aside by a vote of the Committee.

<sup>27</sup> In *Sangamon Valley*, the president of a television station, which had intervened in a television channel allocation proceeding, personally made ex parte presentations to each FCC Commissioner long after the cut-off date prescribed by rule for filing comments with the FCC. This Court vacated the Commission's decision and remanded the proceeding for the above-quoted reason. See *Pacific Molasses Co. v. FTC*, 356 F.2d 386, 389 (5th Cir. 1966) ("When an administrative agency promulgates rules to govern its proceedings, these rules must be scrupulously observed."); *Jefferson Amusement Co. v. FCC*, 96 U.S. App. D.C. 375, 378, 226 F.2d 277, 280 (D.C. Cir. 1955); *McKay v. Wahlenmaier*, 96 U.S. App. D.C. 313, 320-21, 226 F.2d 34, 42-43 (D.C. Cir. 1955); *Sheridan-Wyoming Coal Co. v. Krug*, 84 U.S. App. D.C. 288, 293-94, 172 F.2d 282, 287-88 (D.C. Cir. 1949), *rev'd on other grounds*, 338 U.S. 621 (1950).

onomic data, compromising opposing economic interests, and arriving at rates which are consonant with statutory standards, there is no place for whimsical or hasty action, even by a committee majority. Section 511.12(b) assures committee members, as well as those who will be bound by their decisions, that when the committees "from time to time . . . meet again" they will meet for purposes which are defined in advance, either by the terms of a prior adjournment or by special call of the Chairman or the Wage and Hour Administrator. It thereby assures the fullest possible consideration and deliberation of matters which will come before the Committee.

The meeting of Industry Committee No. 75 on November 12 was a travesty on careful and orderly procedures. Faced with the Chairman's ruling that the purpose of the meeting could not be changed, as well as the Labor Department's "strongest recommendation" that three absent members be permitted to deliberate and vote on the proposed wage increase, five members took it upon themselves to change the meeting's purpose and increase a wage rate which the Committee had already adopted. The decision resulting from this capricious disregard of the regulations governing the Committee's procedures must be set aside.

- V. The Committee's adoption of the \$1.22 minimum wage rate was invalid because adequate notice of the changed purpose of the meeting at which it was adopted was not given to two Committee members.

After a majority of the Committee voted for a rate of \$1.20 on November 10, the Chairman adjourned the meeting. In doing so, he advised the members that they would

reconvene on November 12 to edit and sign a Report which would be prepared by the staff economist in light of the Committee's decision. App. C, 6, J.A. 16. This formality was made necessary by Section 511.16 of the regulations, which requires each committee to "prepare a report containing its findings of fact and recommendations . . . [to] be signed by each member of the committee who approves it. . . ." 29 C.F.R. § 511.16 (1965).

*A. Members Atkind and Titelman had valid reason to believe that their presence was not required at the Committee's meeting on November 12.*

Since both Messrs. Atkind and Titelman had voted against the \$1.20 rate, their participation in the formal editing and signing of the Committee's Report was not required by the regulations.<sup>28</sup> Nevertheless, Messrs. Atkind and Titelman each inquired whether his presence would be necessary at the November 12 meeting. Each was advised by the Chairman and by a responsible official of the Department of Labor that he need not attend.<sup>29</sup> Accordingly, Mr. Atkind turned his attention to the affairs of his own company in Puerto Rico and Mr. Titelman returned to New York. App. D, 9, App. E, 11.

<sup>28</sup> 29 C.F.R. § 511.16 (1965) provides: "At any time within 3 days after the committee report is signed by those who approve it, members dissenting therefrom may collectively or individually submit signed reports stating the reasons for their dissent."

<sup>29</sup> Mr. Atkind was so advised by Chairman Horlacher and Mr. David Blum, the Assistant Regional Attorney of the Wage and Hour Division (App. D, 9); Mr. Titelman was so advised by Chairman Horlacher and Mr. Ralph S. Meyers, Regional Director of the Puerto Rico Office of the Wage and Hour Division (App. E, 11).

*B. The Committee's failure to give members Atkind and Titelman adequate notice of the changed purpose of the November 12 meeting violated Section 5(b) of the Act.*

Section 5(b) of the Act provides that each industry committee "shall include a number of disinterested persons representing the public . . . a like number of persons representing employees in the industry, and a like number of persons representing employers in the industry."

The four Committee members who were committed to the highest possible rate, Messrs. Alper, DeLeo, Schwartz, and Sanchez, were present at the Committee meeting on November 12. So was the Chairman. When Mr. Yagoda, who only two days before had moved to adopt a \$1.20 rate, indicated that he had changed his mind in favor of a rate of \$1.22, Section 5(b) required that the meeting be adjourned until such time as the absent members could reasonably be expected to attend. Mr. Yagoda himself actually proposed this course of action, but his motion died for lack of a second. J.A. 19, 33.

Instead, Committee counsel telephoned Messrs. Atkind and Titelman, informed them of Mr. Yagoda's intention to move for a change in the Committee's wage determination, and requested their presence at the Committee's meeting that day. Mr. Titelman, who was then in New York, advised Committee counsel that it would not be possible for him to return to Puerto Rico on such short notice. App. E, 11. Mr. Atkind informed Committee counsel that, having been assured that his presence would not be needed, he had made other plans; he stated that although he could not attend at that time he might be able to attend very late that afternoon. App. D, 9. Neither Mr. Titelman nor Mr. Atkind heard anything further from Committee counsel or anyone else, and neither was present during any part of the Committee's meeting on November 12. App. E, 11, App. D, 9.

Messrs. Atkind and Titelman were the only members of Industry Committee No. 75 representing the Puerto Rican Sweater and Knit Swimwear Industry. As such, they were uniquely qualified to participate in the Committee's wage determination for this industry, and they had a direct interest in the Committee's decision. Yet because they were not given adequate notice, they were deprived of their right to take part in the most critical session of the Committee.<sup>30</sup>

Indeed, the right of Messrs. Atkind and Titelman to have adequate notice of the changed purpose of the Committee's meeting on November 12 is indistinguishable from their right to be notified of the Committee's public hearing. It cannot be seriously contended that, under the terms of Section 5(b) of the Act, the Administrator could have convened the public hearing without advising all Committee members in advance of the hearing's time

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<sup>30</sup> Committee counsel was painfully aware of this fact at the November 12 meeting:

MR. BLUM: I think it appropriate for me to point out several other things in dealing with this situation.

One, the absence, which you have pointed out, of two employer members of the committee and the absence of one public member of the committee, who, in light of the unusual nature of this situation, might well have comments to make and might be prevented from making comments which they would deem important if we did not allow them an opportunity to be here.

I am simply pointing that out for the benefit of the Chair and the committee. J.A. 29.

\* \* \*

MR. BLUM: I again refer to the absence of three members of the committee as significant . . . and that they too may have comments to make. With respect to the matter of the absent committee people, as I said, they may have important comments to make on this matter. It is the Department's position that the committee should give consideration to giving full opportunity and notice for them to appear so that they may have a chance, a fair chance, to make such comment as they want to make. J.A. 32.

and place. Similarly, those acting for the Administrator were obligated to give Messrs. Atkind and Titelman adequate notice of an attempt to change the minimum wage rate at a meeting not called for that purpose.

Quite apart from the language of Section 5(b), it is well settled at common law that adequate notice of a special meeting must be given to all members of a policy-making body.<sup>31</sup> When special matters arise which require decision by such a body, the persons bound by the decision are entitled to the experience and judgment of all its members.<sup>32</sup> Without adequate notice, decisions taken at such a meeting are invalid; it is immaterial that a quorum was present or that the absent members were likely to dissent from the decision.<sup>33</sup>

<sup>31</sup> Some of the leading cases are: *Paola & Fall River Ry. v. Commissioners of Anderson County*, 16 Kan. 302, 308-09 (1876) (board of county commissioners); *Harding v. Vandewater*, 40 Cal. 77, 83 (1870) (corporate board of directors); *People ex rel. Loew v. Batchelor*, 22 N.Y. 128, 133-34 (1860) (board of aldermen); *Wiggin v. Elder & Deacons of The First Freewill Baptist Church*, 49 Mass. (8 Met.) 301, 312 (1845) ("proprietors" of a religious society); *Stowe v. Wyse*, 7 Conn. 214, 219 (1828) (stockholders). For collected cases regarding special meetings of corporate directors, see 2 FLETCHER, PRIVATE CORPORATIONS § 406 (perm. ed. rev. repl. 1954). For collected cases regarding special meetings of municipal officers, see 4 McQUILLAN, MUNICIPAL CORPORATIONS § 13.37 (3rd ed. 1949).

<sup>32</sup> See, e.g., *Holcombe v. Trenton White City Co.*, 80 N.J. Eq. 122, 134, 82 Atl. 618, 624 (1912), *aff'd mem.* 82 N.J. Eq. 324, 91 Atl. 1069 (1913); *Singer v. Salt Lake City Copper Mfg. Co.*, 17 Utah 143, 161-62, 53 Pac. 1024, 1028 (1898); *Doernbecher v. Columbia City Lumber Co.*, 21 Or. 573, 577, 28 Pac. 899 (1892); *Paola & Fall River Ry. v. Commissioners of Anderson County*, 16 Kan. 302, 309 (1876).

<sup>33</sup> See, e.g., *Lycette v. Green River Gorge, Inc.*, 21 Wn. 2d 859, 863, 153 P.2d 873, 875 (1944); *Singer v. Salt Lake City Copper Mfg. Co.*, 17 Utah 143, 162, 53 Pac. 1024, 1028 (1898); *Doernbecher v. Columbia City Lumber Co.*, 21 Or. 573, 577, 28 Pac. 899, 900 (1892); *Beaver Creek v. Hastings*, 52 Mich. 528, 18 N.W. 250 (1884).

Had Messrs. Atkind and Titelman been present at the Committee's meeting on November 12, public member Yagoda might again have been persuaded that the \$1.20 rate of which he had been the principal proponent on November 10—not once but three times—more accurately reflected economic conditions in the industry and more closely conformed to the statutory standards. But Messrs. Atkind and Titelman were absent, relying on the announced formal purpose of the November 12 meeting, and on assurances by the Chairman and responsible Labor Department officials that they need not attend. These assurances were in accord with 29 C.F.R. § 511.16 (1965), which expressly provides that only those members approving the committee's recommended rate need be present to sign the Committee's Report. In the absence of Messrs. Atkind and Titelman, petitioners—eighteen of the nineteen companies in the Puerto Rican Industry—were unlawfully deprived of their right to have their representatives on the Committee participate in the deliberations with respect to Mr. Yagoda's motion. The \$1.22 wage rate adopted in their absence is therefore invalid, and must be set aside.

**VI. The Committee's recommendation of a \$1.22 minimum wage rate for the Puerto Rican Sweater and Knit Swimwear Industry was not supported by substantial evidence.**

Industry Committee No. 75's Report, Findings of Fact, and Recommendations states:

*On the basis of the entire record, the committee finds that a minimum wage rate of \$1.22 an hour set forth in the recommendation below is the highest minimum wage rate which will not substantially curtail employment in the industry and will not give the industry in Puerto Rico a competitive advantage over industry in the United States outside of Puerto Rico. J.A. 4, emphasis added.*

While the Committee purports to have made this find-

ing "on the basis of the entire record," the Committee actually made it on the basis of a few isolated facts.<sup>34</sup>

In determining whether the Committee's finding is supported by substantial evidence, this Court is not limited

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<sup>34</sup> The facts found by the Committee were as follows:

In 1964, shipments of sweaters from Puerto Rico to other parts of the United States amounted to approximately 386 thousand dozens, a decrease of 1.7 percent below the 393 thousand dozens shipped in 1963. The value of shipments in 1964 amounted to \$15.3 million, a decrease of 15 percent since 1963. For the first 8 months of 1965, shipments amounted to 265 thousand dozens valued at \$17.6 million. The quantity of shipments decreased during the first 8 months of 1965 compared with the same period in 1964, but the value of shipments increased from \$9.2 million to \$17.6 million, an increase of more than 90 percent. Some of the largest firms in the industry reported an increase in sales during their most recent fiscal year compared with the previous year.

A total of 2,344 covered workers were employed in the industry in Puerto Rico during a workweek in August 1965. This number of workers compares with 2,171 in August 1964 and 2,294 in August 1963. As of May 15, 1965, employment reached 2,404 as compared with 2,371 as of May 15, 1963 and 2,039 as of May 15, 1964. As of February 15, 1965 employment was 2,204, as compared with 2,160 a year ago and 2,122 two years ago.

Average straight-time hourly earnings were \$1.27 in February 1965, the same as in August 1964. Over half of the workers were paid no more than the \$1.17 wage order minimum. The average earnings by firm ranged from \$1.19 to \$1.47 in February 1965.

A labor-management agreement is in force in one firm, which employed 170 covered workers in August 1965. The agreement provided for a minimum hourly rate of \$1.27 an hour, effective April 1, 1965. Average straight-time hourly earnings of workers in this firm increased from \$1.47 in February 1965 to \$1.53 in October 1965.

Gross average hourly earnings of production workers in knit outerwear mills in the 50 States have increased from 3 to 5 cents an hour each year since 1961. At the time the \$1.17 minimum was adopted, the latest available stateside average was \$1.70 as of April 1963. In August 1965, the latest date for which data are available, gross average hourly earnings were \$1.85, an increase of 15 cents over April 1963." J.A. 3-4.

to a review of the few facts selected by the Committee.<sup>35</sup> Section 10(e) of the APA, 5 U.S.C. § 1009(e) (1965), requires "the court [to] review the *whole record or such portions thereof as may be cited by any party.*" (Emphasis added.)<sup>36</sup> The Supreme Court has held that this requirement means "the substantiality of the evidence must take into account whatever in the record fairly detracts from its weight." *Universal Camera Corp. v. NLRB*, 340 U.S. 474, 488 (1951).

The entire record in this proceeding does not support, but contradicts, the Committee's finding: the evidence demonstrates that the current minimum wage of \$1.17 does not give this Puerto Rican industry a competitive advantage over the mainland industry, and that any in-

<sup>35</sup> Professor Jaffe has recently observed: "Judicial review is designed . . . to provide minimum assurance that there is record evidence which provides a rational or logical basis for the finding and for the consequent presumption that the finding was in fact the product of reasoning from evidence. This must mean evidence *in the case and in the context of the case.* To abstract out of a case that part of the evidence which can be made to support a conclusion is to imagine an abstract case, a case that was never tried. A conclusion based on such abstracted evidence may be 'rational,' but it is not a rational decision of the case which was in fact tried." JAFFE, JUDICIAL CONTROL OF ADMINISTRATIVE ACTION 601 (1st ed. 1965).

<sup>36</sup> § 10(e) of the APA governs judicial review of industry committee proceedings. That section provides: "[The reviewing court] shall . . . (B) hold unlawful and set aside agency action, findings, and conclusions found to be . . . (5) unsupported by substantial evidence *in any case subject to the requirements of sections 7 and 8 or otherwise reviewed on the record of an agency hearing provided by statute.* . . . In making the foregoing determinations the court shall review the whole record or such portions thereof as may be cited by any party. . . ." (Emphasis added.) § 8(b) of the Fair Labor Standards Act specifically requires industry committees to conduct hearings. Judicial review on the record of those hearings is provided for in § 10(a) of the Act. The Administrator's regulations acknowledge that "all wage order proceedings will be conducted in accordance with the standards provided in the Administrative Procedure Act. . . ." 29 C.F.R. § 511.1 (1965).

crease over the current minimum will substantially curtail employment.

*A. The Committee disregarded the declining production, the relatively low employment level, and the relatively high wages in the industry.*

"Virtually all output of the [Puerto Rican] industry is shipped from Puerto Rico to the mainland. . . ." J.A. 3. Although the Committee noted that the number of sweaters shipped from Puerto Rico to the mainland declined during 1964, it failed to note that sweater shipments have declined by approximately 19% during the three years prior to August 31, 1965. J.A. 177, 145.<sup>37</sup> The Committee also failed to note that total sweater production on the mainland has increased by approximately 19% during the same period. J.A. 178, 113. The Puerto Rican industry has accordingly experienced a marked decline in its share of the mainland market. Indeed, Puerto Rican sweater shipments as a percent of total United States production dropped from 4.6% in 1960 to 3.8% in 1964. J.A. 50.<sup>38</sup> In the first eight months of 1964, Puerto Rican sweater shipments were 4.8% of the total; in the first eight months of 1965, they were 4.3% of the total. J.A. 50.

This steady decline in the Puerto Rican share of the mainland market compels the conclusion that the current wage rate of \$1.17 has not put mainland companies at a competitive disadvantage vis-a-vis the Puerto Rican industry. On the contrary, the mainland industry has been enjoying a growing competitive advantage.

<sup>37</sup> Sweater shipments data for August, 1965 were the most recent available to the Committee. J.A. 206.

<sup>38</sup> The Puerto Rican Sweater and Knit Swimwear Industry's 3.8% of the mainland market in 1964 should be contrasted with the Puerto Rican Brassiere Industry's 43% of the mainland market during the same year. J.A. 80-81.

The Committee also relied upon selective employment data. The Committee failed to note that average employment in the Puerto Rican industry for the first eight months of 1965 was 5.8% below the yearly average for 1959, 5.3% below the yearly average for 1961, and 5.5% below the yearly average for 1962. J.A. 212.

The Committee also failed to note that the employment trend in the Puerto Rican industry contrasts strikingly with the trend in the mainland industry, where average employment for the first eight months of 1965 was 17.9% above the yearly average for 1961 and 9.2% above the yearly average for 1962. J.A. 171.

The employment trend in sweaters and knit swimwear also compares unfavorably with the trend in other similar industries in Puerto Rico. Both in the Apparel and Textile Mill Products industries employment in the month of August, 1965 (the latest month for which data were available) was more than 17% greater than in the month of August, 1962. J.A. 79.

But while employment has fallen off, this Puerto Rican industry's current minimum wage rate is higher, in some cases substantially higher, than the minimum wage rate in all other garment and textile industries in Puerto Rico, except the mattress and pillow classification of the Textile and Textile Products Industry. J.A. 187, 77. Further, in February, 1965, this industry's average straight-time hourly earnings of \$1.27 an hour were four cents *higher* than the average Puerto Rican manufacturing wage, whereas the hourly earnings of \$1.84 in the mainland industry were seventy-five cents *lower* than the average manufacturing wage on the mainland. J.A. 188, 78.

In short, by selecting only the most recent employment figures to support its finding that a five cent wage increase would not substantially curtail employment, the Committee ignored the significant fact that, at the present minimum wage rate, employment is lower than it was as long ago as 1959 and as recently as 1962. The Com-

mittee also failed to note the marked contrast of this Puerto Rican industry's recent employment and earnings record with that of other industries in Puerto Rico and this industry on the mainland. Whereas the Committee's selected findings, taken out of context, suggest recent expansion in an industry with prevailing low wages, the record shows that the industry has retrogressed, while its wages have risen higher than the average in Puerto Rico.

*B. The Committee ignored the fact that profits in this industry in Puerto Rico have drastically diminished, while profits in this industry on the mainland and in other Puerto Rican industries have risen.*

If, in a highly competitive market, additional wage costs are to be absorbed without curtailing employment, they must come out of profits. For this reason, "general data with respect to profitability must be considered if wage fixation is to rest upon [a] sound statistical foundation."<sup>39</sup> The Administrator's regulations require employers wishing to testify as to their inability to adjust to a higher minimum rate to submit detailed profit and loss statements to the committee. 29 C.F.R. §§ 511.13, 511.8(b) (1965). Such data were submitted by all eighteen petitioners. J.A. 190-99, Ex. 13, pp. X1-X358. Yet Industry Committee No. 75 apparently shut its eyes to any evidence of this industry's profit status.

The only reference in the Committee's Report which remotely relates to profitability is the following observation: "Some of the largest firms in the industry reported an increase in sales during their most recent fiscal year compared with the previous year." J.A. 3. The Committee, however, did not report the fact that four firms, which together employed 28.5% of all covered employees

<sup>39</sup> Golding, *The Industry Committee Provisions of the Fair Labor Standards Act*, 50 Yale L.J. 1141, 1167 (1941).

in this industry as of August 15, 1965, sustained substantial operating losses during their most recent fiscal years. J.A. 86, 190-91, 212, 213.

Nor did the Committee note the fact that the industry's profits have decreased dramatically in the past four fiscal years: in absolute amounts from \$774,725 in 1961 to \$306,341 in 1964; as a percent of sales from 4% in 1962 to 1.6% in 1964. J.A. 194, 52. At the same time, this industry on the mainland has become markedly more profitable. Both in absolute amounts and as a percent of net sales, the operating profits of the Textile Mill Products and Apparel & Other Finished Products industries were higher during the first and second quarters of 1965 than during comparable periods in each of the preceding three years. J.A. 85-86, 189. Moreover, of ninety-five industries promoted by the Puerto Rican Economic Development Administration, sweater knitting mills were only eighty-fifth in total profits in 1963. J.A. 218-21. The profit as a percent of sales for 1963 in these mills was 2% compared with 14.9% for all manufacturing industries. J.A. 218, 222.

In September, 1965 the Commonwealth of Puerto Rico advertised that plants were "coming to the island at the rate of almost four a week." J.A. 75. But despite tax exemption and other benefits offered manufacturing enterprises by the Commonwealth (J.A. 153), no mainland company has opened a new plant in the Puerto Rican Sweater and Knit Swimwear Industry since 1957. J.A. 47, 70. Since 1957, "the number of firms in the industry has remained nearly the same" (J.A. 152), while from June, 1957 to December, 1964, the total number of existing plants promoted by the Puerto Rican Economic Development Administration has more than doubled. J.A. 180. One Puerto Rican sweater knitting plant closed in 1963, and another closed in 1964. Neither was able to find a purchaser. J.A. 72-74. Not one of these critical facts was taken into account by the Committee.

In light of the facts which the Committee ignored, what weight should be given the selected facts upon which its wage recommendation was based? The fact that the minimum wage in one of nineteen companies is higher than the mainland minimum has no relevance to the whole industry's ability to bear a significant wage increase without substantially curtailing employment. The gross average hourly earnings of production workers in an expanding mainland industry have no bearing upon the ability of their employers' Puerto Rican competitors to absorb higher labor costs without cutting back jobs. While the value data cited by the Committee showed an increase during 1965, "value" is no more and no less than the cost of the product plus any profit or minus any loss. J.A. 82-83. Thus when profits as well as production in the industry have declined, increased "value" is merely a reflection of increased costs—labor, materials, overhead, and administrative expenses. J.A. 83-84. The Committee had before it petitioners' audited profit and loss statements which demonstrate this fact.

Thus, not only did the Committee disregard the full facts regarding production, employment, and earnings in this industry, but it also completely ignored the vital fact of this industry's lack of profitability. In light of the overwhelming weight of evidence in the record, the selective facts in the Committee's Report provide no rational or logical basis for its conclusion that the \$1.22 rate is the highest minimum wage rate which will not curtail employment in this industry and will not give this industry a competitive advantage over mainland industry. This Court "cannot conscientiously find that the evidence supporting that decision is substantial, when viewed in the light that the record in its entirety furnishes, including the body of evidence opposed to the [Committee's] view." *Universal Camera Corp. v. NLRB*, 340 U.S. 474, 488 (1951). This Court must therefore set the Committee's wage recommendation aside.

## CONCLUSION

Industry Committee No. 75 arrived at its minimum wage recommendation at an illegal session. It did so in the absence of, and without adequate notice to, two employer members, who were thereby deprived of their right to participate in the Committee's deliberations. This minimum wage recommendation was made by a Committee which was unlawfully constituted, in that four of its six employer and employee members were committed to the highest possible minimum wage when they were appointed. In arriving at its recommendation, the Committee relied on an unpublished interpretative rule, to petitioners' prejudice. Moreover, the Secretary abused his discretion by establishing this Committee within a biennial period. Finally, the Committee's recommendation was not based on substantial evidence.

For the foregoing reasons this Court should set aside respondents' minimum wage order.

Respectfully submitted,

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March 16, 1966

APPENDIX A

EXHIBIT D

#3

Before Industry Committee) SS:  
No. 68C for Puerto Rico )

PREHEARING STATEMENT ON BEHALF OF  
INTERNATIONAL LADIES' GARMENT  
WORKERS' UNION (AFL-CIO)

1. The International Ladies' Garment Workers' Union (hereafter referred to as ILGWU) is a labor organization with members in the garment industry generally, and in the sweater and knit swimwear industry in particular. As such it has a distinct and substantial interest in the proceedings of Industry Committee No. 68C. ILGWU proposed therefore to participate as a party in the proceedings of said Committee.

2. Dr. Lazare Teper, Director, Research Department, ILGWU, 1710 Broadway, New York, N.Y. 10019, will present the case on behalf of ILGWU before the Committee.

3. The witness on behalf of ILGWU will be Dr. Lazare Teper, 1710 Broadway, New York, N.Y. 10019. The summary of evidence proposed to be developed by Dr. Teper is attached hereto.

4. The written data which will be introduced in evidence in the course of the hearings consists of 22 pages attached hereto.

5. The ILGWU proposes to support the minimum wage of \$1.25 for the Sweater and Knit Swimwear Industry in Puerto Rico and the maximum allowable rate in the case of employees newly covered by reason of the Fair Labor Standards Amendments of 1961.

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6. The approximate length of time needed to present the case and offer direct testimony is four hours.

Respectfully submitted,

/s/ Lazare Teper  
Lazare Teper, Director  
Research Department  
ILGWU  
1710 Broadway  
New York, N.Y. 10019

Attachments:

Summary of Evidence  
Written data consisting of 22 pages

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APPENDIX B

EXHIBIT E

#10

CORNISH KNITGOODS MANUFACTURING CORP.  
Manufacturers of High Grade Sweaters  
and Knitted Sportswear  
121 Ingraham Street  
Brooklyn 37, N.Y.

November 4, 1964

Regional Director  
Wage and Hour Division  
Condomino San Alberto Building  
1200 Ponce de Leon Avenue  
Santurce, Puerto Rico

Dear Sirs:

This statement is filed for Industry Committee No. 68-C for the Sweater and Knit Swimwear Industry in Puerto Rico, by the United Knitwear Manufacturers League, Inc. The member firms of this Association manufacture sweaters and other knitted apparel in the New York metropolitan area. Most of the members are contractors, who use their services and equipment in manufacturing the goods of others, although some of their members sell the merchandise they produce.

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The knit outerwear industry in Puerto Rico competes directly with our members. The Puerto Rican industry is no longer an infant industry, but is now strong and mature. The wage advantage which the employers in this industry on the Island have enjoyed until now is no longer justifiable. Their level of production and industrial maturity call for the application of the full statutory minimum.

A failure to establish a minimum wage of \$1.25 an hour for the industry in Puerto Rico will only perpetuate the harassment of mainland employers. Even if the \$1.25 minimum became applicable to Puerto Rican employers as well as mainland employers, the Puerto Rican knitwear producer would still retain a substantial competitive advantage.

Our member firms employ approximately 9,500 persons. The cost of the Labor employed is a basic component of their cost structure.

In July 1964, the Association concluded an agreement to run for three years with Local 155 of the International Ladies' Garment Workers Union. Under this contract, and under earlier contracts with the same union, our member firms are required to pay minimum wage rates which are far in excess of the legal minimums. Moreover, most of the employees are piece workers, and their earnings are substantially higher than the minimum wages fixed by the contract, often twice as much.

Our recent agreement not only raised minimum rates from 11 to 20 cents per hour, but also provided for a 5 per cent increase for piece workers and increases of 10 to 20 cents per hour for week workers, effective July 20, 1964.

All our member firms contribute 4-1/2% of gross payroll to a Health and Welfare Fund, 2% to the Knitgoods Workers Retirement Fund and 1/2 of 1% to a Severance Benefits Fund. Our employer members also pay

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each employee a vacation allowance equal to a full week's pay as well as 5 paid holidays a year.

For many years our member firms have been required to observe a 35 hour week and to pay time and one-half for all work over 7 hours a day.

Finally, we would like to state that according to the U.S. Bureau of Labor Statistics, the national average hourly earnings in the knit outerwear industry was \$1.77 in June 1964. During the same month, according to the New York State Department of Labor, the average hourly wage in New York City knitting mills was \$2.45. The local average wage is even higher in the manufacture of full fashioned sweaters which is a major item produced by the Puerto Rican industry.

We respectfully urge, therefore, that the minimum rate for the Sweater and Knit Swimwear Industry in Puerto Rico be set at \$1.25 per hour.

Respectfully submitted,

UNITED KNITWEAR MANUFACTURERS LEAGUE, INC.

/s/ Herbert Alper  
Herbert Alper, President

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APPENDIX C

EXHIBIT A

UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA

BONITA, INC., et al.,

Petitioners,

v.

W. WILLARD WIRTZ, Secretary  
of Labor,

Respondent.

No. 19841

On Petition to Re-  
view Wage Order of  
The Secretary of  
Labor.

AFFIDAVIT

COUNTY OF PHILADELPHIA )

COMMONWEALTH OF PENNSYLVANIA ) SS.:

JOHN PERRY HORLACHER, being first duly sworn,  
deposes and says:

1. I am a professor and chairman of the Political Science Department at the University of Pennsylvania. I have been a member of the faculty at Pennsylvania for approximately thirty years. I have acted in various capacities for the Government, including service as chairman of the Philadelphia Regional Board of the National Wage Stabilization Board from March through June, 1946, chairman of the Philadelphia Regional Wage Stabilization Board from July, 1951 to April of 1953, and chairman or public member of approximately fifteen U.S. Department of Labor Industry Committees dealing with minimum wage rates for various industries in Puerto Rico. I have also served as an arbitrator in several hundred labor disputes.

2. By letter from Secretary of Labor W. Willard Wirtz I was appointed Chairman of Industry Committee

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No. 75 to recommend minimum wages for the Sweater and Knit Swimwear Industry in Puerto Rico.

3. To the extent that this affidavit encompasses executive sessions of the Committee, I shall confine myself to what I believe are matters of public record under Section 511.17 of the Labor Department's regulations governing the Committee's procedure. I am making this affidavit on these matters because I understand that the public record has not yet been prepared.

4. Committee No. 75, a nine-member tri-partite committee, met in executive session in San Juan, Puerto Rico on the morning of November 8, 1965, and in public session that afternoon, and also on November 9 and 10, 1965.

5. At the conclusion of the public hearing on November 10, the Committee went into executive session for the purpose of discussing the evidence and arriving at a recommended rate. The three Labor Members and Industry Member Alper voted for an increase of 8¢ an hour (i.e., an increase from \$1.17 to \$1.25), but this proposal did not carry for want of a majority. On motion of Public Member Yagoda, a majority of the Committee, consisting of Public Members Villaronga and Yagoda, Labor Members Schwartz and Sanchez, and Industry Member Alper, voted for a 3¢ increase to \$1.20. Labor Member DeLeo dissented. Industry Members Titelman and Atkind dissented. I also dissented.

6. After the Committee's vote of \$1.20 had been recorded in the minutes, I adjourned the meeting, stating that the Committee would reconvene at 10:30 A.M. November 12 (November 11 being a legal holiday), for the purpose of editing a draft Report and Findings of Fact prepared by the staff economist in light of the Committee's action in recommending a \$1.20 rate and for the purpose of signing the Report and Findings of Fact. A question of the necessity of the dissenting Industry Members Titelman and Atkind being present was raised

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and I indicated my view that the formality of signing could be accomplished without their presence at the November 12 executive session.

7. On November 12, shortly before the meeting was to convene at 10:30 A.M., I learned from Public Member Yagoda that he intended to move for reconsideration of the Committee's action recommending a \$1.20 rate and that he intended to propose instead that the Committee recommend a rate of \$1.22.

8. Industry Members Titelman and Atkind were not present when the meeting convened; Public Member Vilaronga, although present when the meeting convened, left the meeting before the vote was taken and did not return. Public Member Yagoda moved to reconsider the Committee's action of November 10. I ruled this motion out of order, calling attention to Section 511.12(b) of the Labor Department's regulations, which provides that:

"A committee may adjourn its meeting or hearing, or both, from time to time, and meet again, at hearing or otherwise, pursuant to the terms of adjournment, or on call of its chairman or the Administrator."

I stated that this executive session had been called for the purpose of adopting the form of the Committee's Report and Findings of Fact and that, therefore, the motion to reconsider the rate was not in order. Objection to my ruling was made by Public Member Yagoda, and the ruling was reversed by a majority of the members present.

9. Upon motion of Public Member Yagoda, a majority of the Committee, consisting of Public Member Yagoda, Industry Member Alper, and Labor Members Schwartz, Sanchez and DeLeo, voted to recommend a rate of \$1.22. I dissented. The other three members were not present.

/s/ John Perry Horlacher

Subscribed and sworn to before  
me this 30th day of November,  
1965

/s/ Mildred E. Hutchison, Notary Public

---

APPENDIX D

EXHIBIT B

UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA

BONITA, INC., et al.,  
Petitioners,

v.

W. WILLARD WIRTZ, Secretary  
of Labor,  
Respondent.

No. 19841  
On Petition to  
Review Wage Order  
of the Secretary of  
Labor

AFFIDAVIT

STATE OF NEW JERSEY )  
COUNTY OF PASSAIC ) SS:

LEON ATKIND, being duly sworn, deposes and says:

1. I am the President of Rosita Mills, Inc., a Puerto Rican company which is subject to the definition of the Sweater and Knit Swimwear Industry and which was a party in the proceeding before Industry Committee No. 75 in San Juan, Puerto Rico.

2. I was appointed an Industry Member of Committee No. 75 and I participated in all of the executive and public sessions of that Committee, commencing on November 8, 1965 and ending with the executive session on November 10.

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3. At the close of the public hearing on November 10, the Committee went into executive session for the purpose of considering the evidence and recommending a minimum rate. The Committee by majority vote decided upon a rate of \$1.20. I dissented from that recommendation.

4. At the conclusion of the November 10 executive session the Chairman stated that the Committee would reconvene on November 12 for the purpose of editing and signing the Report and Findings of Fact which were to be prepared by the Committee economist. In view of the fact that I had dissented from the Committee's recommended rate, I inquired as to whether my presence would be necessary at the November 12 session. I was advised by Chairman Horlacher and by Mr. David Blum, the Assistant Regional Attorney of the Wage and Hour Division, that my presence would not be required.

5. In view of the foregoing assurances that I would not be needed at the November 12 meeting, I made arrangements to take care of the business affairs of my own company, Rosita Mills, Inc.

6. On the morning of November 12, I received a call from Mr. Blum advising me that Public Member Yagoda was going to seek reconsideration of the Committee's November 10 decision and requesting me to be present at the Committee meeting. I stated that I had made other plans on the basis of the assurances I had received that my presence would not be necessary, and I told Mr. Blum that I could not attend at that time but that I might be able to attend very late that afternoon. I did not hear further from Mr. Blum or anyone else with regard to this matter.

/s/ Leon Atkind

Subscribed and sworn to before  
me this 8th day of December, 1965.

/s/ Morris Pearl, Notary Public of New Jersey.

APPENDIX E

EXHIBIT C

UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA

BONITA, INC., et al.,  
Petitioners,

v.

W. WILLARD WIRTZ, Secretary  
of Labor,  
Respondent.

No. 19841  
On Petition to Re-  
view Wage Order of  
the Secretary of  
Labor

AFFIDAVIT

COUNTY OF NEW YORK )  
STATE OF NEW YORK ) SS:

FRANK TITELMAN, being first duly sworn, deposes  
and says:

1. I am Chairman of the Board of Puritana, Inc., a  
Puerto Rican corporation covered by the definition of  
the Sweater and Knit Swimwear Industry and a party to  
the proceedings before Industry Committee No. 75 in  
San Juan, Puerto Rico.

2. I was appointed an employer member of Commit-  
tee No. 75. As a member, I participated in all of the  
executive and public sessions of the Committee, begin-  
ning on November 8, 1965 and ending at the close of the  
executive session on November 10, 1965.

3. At the conclusion of the public hearing on Novem-  
ber 10, the Committee went into executive session for  
the purpose of considering the evidence and recommend-  
ing a minimum rate. After other motions failed to car-

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ry a majority, the Committee voted to recommend a rate of \$1.20. I dissented from this recommendation.

4. At the conclusion of the November 10 executive session, the Chairman announced that the Committee would reconvene at 10:30 A.M. on November 12 for the purpose of editing and signing the Report and Findings of Fact which would be drafted by the Committee economist. In view of the fact that I had dissented from the Committee's recommendation, I asked whether my presence would be necessary at the November 12 session. I was advised both by Chairman Horlacher and Regional Director Meyers of the San Juan office of the Wage and Hour Division that my presence would not be required.

5. In view of the foregoing assurances that there would be no need of my presence at the November 12 meeting, I left Puerto Rico on November 11 and returned to New York City where I had arranged to meet my wife and drive back to our home in Altoona, Pennsylvania.

6. About 12:30 P.M. on November 12, I returned to my hotel in New York where I found a message that Mr. David Blum, the Assistant Regional Attorney of the Wage and Hour Division in San Juan, had made an effort to telephone me at my New York office. When I spoke to Mr. Blum, he informed me that Public Member Yagoda was going to seek reconsideration of the decision of November 10 and he, Mr. Blum, suggested that I return to San Juan. I told Mr. Blum that I would have to see if this could be arranged and that I would call him back.

7. When I reflected on Mr. Blum's request, I realized that it simply would not be possible to return to San Juan on such a short notice. I thereupon called Mr. Blum and informed him that I could not return to San Juan at that time.

/s/ Frank Titelman

Subscribed and sworn to before  
me this 10th day of December, 1965

/s/ Paul R. Kelberg, Notary Public of New York

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**APPENDIX F**

**Statutes and Regulations Involved**

**Fair Labor Standards Act**

**Sec. 5.**

\* \* \*

(b) An industry committee shall be appointed by the Administrator without regard to any other provisions of law regarding the appointment and compensation of employees of the United States. It shall include a number of disinterested persons representing the public, one of whom the Administrator shall designate as chairman, a like number of persons representing employees in the industry, and a like number representing employers in the industry. In the appointment of the persons representing each group, the Administrator shall give due regard to the geographical regions in which the industry is carried on.

(c) Two-thirds of the members of an industry committee shall constitute a quorum, and the decision of the committee shall require a vote of not less than a majority of all its members . . . . The Administrator shall furnish the committee with adequate legal, stenographic, clerical, and other assistance, and shall by rules and regulations prescribe the procedure to be followed by the committee.

(d) The Administrator shall submit to an industry committee from time to time such data as he may have available on the matters referred to it, and shall cause

to be brought before it in connection with such matters any witnesses whom he deems material. An industry committee may summon other witnesses or call upon the Administrator to furnish additional information to aid it in its deliberations. Act of June 25, 1938, ch. 676, § 5, 52 Stat. 1062, as amended, 29 U.S.C. § 205 (1965).

\* \* \*

Sec. 8.

(a) The policy of this chapter with respect to industries or enterprises in Puerto Rico and the Virgin Islands engaged in commerce or in the production of goods for commerce is to reach as rapidly as is economically feasible without substantially curtailing employment the objective of the minimum wage prescribed in paragraph (1) of section 206(a) of this title in each such industry. The Administrator shall from time to time convene an industry committee or committees, appointed pursuant to section 205 of this title, and any such industry committee shall from time to time recommend the minimum rate or rates of wages to be paid under section 206 of this title by employers in Puerto Rico or the Virgin Islands, or in Puerto Rico and the Virgin Islands, engaged in commerce or in the production of goods for commerce or in any enterprise engaged in commerce or in the production of goods for commerce in any such industry or classifications therein. Minimum rates of wages established in accordance with this section which are not equal to the minimum wage rate prescribed in paragraph (1) of section 206(a) of this title shall be reviewed by such a Committee once during each biennial period, beginning with the biennial period commencing July 1, 1958, except that the Secretary, in his discretion, may order an additional review during any such biennial period.

(b) Upon the convening of any such industry committee, the Administrator shall refer to it the question of

the minimum wage rate or rates to be fixed for such industry. The industry committee shall investigate conditions in the industry and the committee, or any authorized subcommittee thereof, shall after due notice hear such witnesses and receive such evidence as may be necessary or appropriate to enable the committee to perform its duties and functions under this chapter. The committee shall recommend to the Administrator the highest minimum wage rates for the industry which it determines, having due regard to economic and competitive conditions, will not substantially curtail employment in the industry, and will not give any industry in Puerto Rico or in the Virgin Islands a competitive advantage over any industry in the United States outside of Puerto Rico and the Virgin Islands.

\* \* \*

(d) The industry committee shall file with the Secretary a report containing its findings of fact and recommendations with respect to the matters referred to it. Upon the filing of such report, the Secretary shall publish such recommendations in the Federal Register and shall provide by order that the recommendations contained in such report shall take effect upon the expiration of 15 days after the date of such publication. Act of June 25, 1938, ch. 676, § 8, 52 Stat. 1064, as amended, 29 U.S.C. § 208 (1965).

Sec. 9.

For the purpose of any hearing or investigation provided for in this chapter, the provisions of sections 49 and 50 of Title 15 (relating to the attendance of witnesses and the production of books, papers, and documents), are made applicable to the jurisdiction, powers, and duties of the . . . industry committees. Act of June 25, 1938, ch. 676, § 9, 52 Stat. 1065, 29 U.S.C. § 209 (1965).

Sec. 10.

(a) Any person aggrieved by an order of the Secre-

tary issued under section 208 of this title may obtain a review of such order in the United States Court of Appeals for any circuit wherein such person resides or has his principal place of business, or in the United States Court of Appeals for the District of Columbia, by filing in such court, within 60 days after the entry of such order a written petition praying that the order of the Secretary be modified or set aside in whole or in part . . . .

Upon the filing of such petition such court shall have exclusive jurisdiction to affirm, modify, or set aside such order in whole or in part, so far as it is applicable to the petitioner. The review by the court shall be limited to questions of law, and findings of fact by such industry committee when supported by substantial evidence shall be conclusive. No objection to the order of the Secretary shall be considered by the court unless such objection shall have been urged before such industry committee or unless there were reasonable grounds for failure so to do. . . . The judgment and decree of the court shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of Title 28.

(b) The commencement of proceedings under subsection (a) of this section shall not, unless specifically ordered by the court, operate as a stay of the Administrator's order. The court shall not grant any stay of the order unless the person complaining of such order shall file in court an undertaking with a surety or sureties satisfactory to the court for the payment to the employees affected by the order, in the event such order is affirmed, of the amount by which the compensation such employees are entitled to receive under the order exceeds the compensation they actually receive while such stay is in effect. Act of June 25, 1938, ch. 676, § 10, 52 Stat. 1065, as amended, 29 U.S.C. § 210 (1965).

Administrative Procedure Act

Sec. 2.

(a) AGENCY. — "Agency" means each authority . . . of the Government of the United States other than Congress, the courts, or the governments of the possessions, territories, or the District of Columbia.

\* \* \*

(c) RULE AND RULE MAKING. — "Rule" means the whole or any part of any agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or to describe the . . . procedure . . . requirements of any agency, and includes . . . the prescription for the future of . . . wages . . . or practices bearing upon any of the foregoing. Act of June 11, 1946, ch. 324, § 2, as amended, 5 U.S.C. § 1001 (1965).

Sec. 3. Except to the extent that there is involved (1) any function of the United States requiring secrecy in the public interest or (2) any matter relating solely to the internal management of an agency —

(a) Every agency shall separately state and currently publish in the Federal Register . . . (3) substantive rules adopted as authorized by law and statement of general policy or interpretations formulated and adopted by the agency for the guidance of the public, but not rules addressed to and served upon named persons in accordance with law . . . . Act of June 11, 1946, ch. 324, § 3, 60 Stat. 238, 5 U.S.C. § 1002 (1965).

Sec. 10(e) Scope of Review. — [The reviewing court] shall . . . (B) hold unlawful and set aside agency action, findings, and conclusions found to be . . . (5) unsupported by substantial evidence in any case subject to the requirements of sections 7 and 8 or otherwise reviewed on the record of an agency hearing provided by statute . . . . In making the foregoing determinations the court

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shall review the whole record or such portions thereof as may be cited by any party . . . .

Federal Register Act

Sec. 305.

(a) There shall be published in The Federal Register . . . (3) such documents or classes of documents as may be required so to be published by Act of the Congress . . . . Act of July 26, 1935, ch. 417, § 5, 49 Stat. 501, 44 U.S.C. § 305 (1965).

Sec. 307.

No documents required under section 305(a) of this title to be published in the Federal Register shall be valid as against any person who has not had actual knowledge thereof until the duplicate originals or certified copies of the document shall have been filed with the Division and a copy made available for public inspection as provided in section 302 of this title . . . . Act of July 26, 1935, ch. 417, § 7, 49 Stat. 502, 44 U.S.C. § 307 (1965).

29 C.F.R. PART 511 (1965) — WAGE ORDER PROCEDURE FOR PUERTO RICO, THE VIRGIN ISLANDS, AND AMERICAN SAMOA

§ 511.1 General method for issuance of wage orders.

All wage order proceedings will be conducted in accordance with the standards provided in the Administrative Procedure Act as interpreted and applied in this part.

\* \* \*

§ 511.3 Composition and appointment of committees.

An industry committee will be composed of residents of the island or islands where the employees with respect to whom such committee was appointed are employed and residents of the United States outside of Puerto Rico, the Virgin Islands, and American Samoa. The Secretary

will appoint as members of each committee an equal number of persons representing (a) the public, (b) employees in the industry, and (c) employers in the industry. The public members shall be disinterested, and the Secretary will designate one as chairman. For purposes of this section only, the definition of the industry shall be considered to include all such industry throughout the United States, its territories and possessions.

\* \* \*

§ 511.7 Committee staff.

Each industry committee will be furnished a lawyer, to serve as committee counsel, and an economist, to serve as committee economist. Committee counsel shall advise the committee on the issues of law, including interpretations of these regulations and the legal scope of the committee's discretion, which arise during the committee proceedings. The committee counsel and economist shall be available to advise and assist the committee at all of its meetings . . . .

§ 511.8 Prehearing statements.

(a) Every employer, employee, trade association, trade union, or group of employers, employees, associations, or unions in the industry as defined, or in such industry elsewhere in the United States, and every other person who, in the judgment of the committee has an interest sufficient to justify the participation he proposes, shall be considered an interested person. No member of the committee may participate as an interested person.

(b) Any interested person who wishes to participate on his own behalf or by counsel shall file a written prehearing statement . . . . The prehearing statement shall describe the person's interest in the proceeding and shall contain (1) the prepared statement he proposes to give, if any; (2) a statement of the individual classifications and minimum wage rates, if any, he proposes to

support; (3) the written data he proposes to introduce in evidence, including all tangible objective data to be submitted pursuant to § 511.13; (4) the names and addresses of the witnesses he proposes to call and a summary of the evidence he proposes to develop; (5) the name and address of the individual who will present his case; and (6) a statement of the approximate length of time his case will take. If the prehearing statement is in conformity with the above requirements, the person shall have the right to participate as a party. In accordance with section 6(c) of the Administrative Procedure Act, industry committees shall, after considering the advice of committee counsel, issue subpoenas authorized by section 9 of the Fair Labor Standards Act of 1938, to parties who make a request therefor accompanied by a clear showing of general relevance and reasonable scope of the evidence sought.

\* \* \*

(d) In exceptional circumstances a person who has not filed the prehearing statement required by this section and who does not appear on a witness list filed by a party may nevertheless be permitted, in the discretion of the committee to offer testimony.

#### § 511.9. Requirements for quorum and decisions.

Two-thirds of the members of an industry committee shall constitute a quorum. Approval by a majority of all of the members of an industry committee or subcommittee shall be required for its report. Except as otherwise provided in this part, the chairman of the industry committee or subcommittee may make other decisions for the committee or subcommittee, but each such decision shall be subject to approval of a majority of the members present if any member objects.

#### § 511.10. Subjects and issues.

The declared policy of the act with respect to industries or enterprises in Puerto Rico, the Virgin Islands,

and American Samoa engaged in commerce or in the production of goods for commerce is to reach as rapidly as is economically feasible without substantially curtailing employment the object of the minimum wage prescribed in paragraph (1) of section 6(a) in each such industry. Each industry committee shall recommend to the Administrator the highest minimum wage rates for the industry which it determines, having due regard to economic and competitive conditions, will not substantially curtail employment in the industry and will not give any industry in Puerto Rico, the Virgin Islands, or American Samoa a competitive advantage over any industry in the United States outside of Puerto Rico, the Virgin Islands, and American Samoa . . . .

#### § 511.11 Pertinent data.

Among the types of data which may be considered pertinent to the subjects and issues delineated in § 511.10, are those revealing (a) employment and labor conditions and trends in Puerto Rico, the Virgin Islands, or American Samoa, as the case may be, and on the mainland, particularly since the promulgation of the presently applicable wage order, including such items as present and past employment, present wage rates and fringe benefits, changes in average hourly earnings or wage structure, provisions of collective bargaining agreements, hours of work, labor turnover, absenteeism, productivity, learning periods, rejection rates, and similar factors; (b) market conditions and trends in Puerto Rico, the Virgin Islands, or American Samoa, as the case may be, and on the mainland, including changes in the volume and value of production, market outlets, price changes, style factors, consumer demand, competitive relationships, tariff rates, and similar marketing factors; (c) comparative production costs in Puerto Rico, the Virgin Islands, or American Samoa, as the case may be, on the mainland, and in foreign countries, together with the factors responsible for differences; (d) financial conditions and trends since promulgation of the present wage or-

der as reflected in profit and loss statements and balance sheets; and (e) data bearing on proper definitions of classifications within an industry.

§ 511.12. Committee and subcommittee meetings.

(a) The full committee, or a quorum thereof, will convene at the time and place appointed for an initial prehearing meeting as provided in the Secretary's order initiating the proceedings (note § 511.2). The full committee acting through a quorum will decide at that meeting whether it will preside at the reception of evidence at the hearing or will authorize a subcommittee to preside . . . .

(b) A committee may adjourn its meeting or hearing, or both, from time to time, and meet again, at hearing or otherwise, pursuant to the terms of adjournment, or on call of its chairman or the Administrator.

§ 511.13. Evidence.

In accordance with the notice of hearing, the committee and any authorized subcommittee will take official notice of the facts stated in the economic report to the extent they are not refuted by evidence received at the hearing. Other pertinent evidence available to the Department of Labor may be presented at the hearing. The committee itself may call witnesses not otherwise scheduled to testify. Oral or documentary evidence may be received, but the committee shall exclude irrelevant, immaterial, and unduly repetitious evidence. Every interested person who has met the requirements for participation as a party shall have the right to present his case by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination of witnesses called by others as may be required for a full and true disclosure of the facts. Testimony on behalf of an employer or group of employees as to inability to pay the minimum wage rate specified in section 6(a)(1) or section 6(b) of the act, whichever would be applicable, or as to inability to adjust to a higher minimum wage

rate than prescribed by any applicable wage order of the Secretary, shall be supported by tangible objective data filed as part of the prehearing statement under § 511.8, including pertinent unabridged profit and loss statements and balance sheets for a representative period of years for the individual firm or firms involved. Such financial data shall include the most recent period of a year or fraction thereof for which data are available. Financial statements filed in accordance with this provision, except those relating to a period of less than a full fiscal year or a fiscal year ending less than 90 days prior to the filing of the prehearing statement, shall be certified by an independent public accountant or shall be sworn to conform to and be consistent with the corresponding income tax returns covering the same years . . . .

\* \* \*

#### § 511.16. Reports.

Promptly after receipt of submissions under § 511.15, the committee or subcommittee will resolve the issues before it and prepare a report containing its findings of fact and recommendations. The report shall contain the committee's or the subcommittee's findings and conclusions as well as the reasons or basis therefor upon all the material issues of fact, law, or discretion presented on the record. When a committee, acting through a quorum, has presided at the reception of evidence, this report shall be its final report on the matters referred to it. . . . Where the committee presides at the reception of evidence and proceeds to final decision every party shall be regarded as having objected to any wage rate or classification at variance with any he proposed in his prehearing statement unless he accepted such a rate or classification in any submittal made pursuant to § 511.15. A copy of the report shall be signed by each member of the committee who approves it, either at a meeting of the committee or by circulation of one or more copies

among the members of the committee. At any time within 3 days after the committee report is signed by those who approve it, members dissenting therefrom may collectively or individually submit signed reports stating the reasons for their dissent.

§ 511.17. Records.

Each industry committee shall keep a journal recording the time and place of all its meetings, the members present, the votes, and other formal proceedings, including the appointment of subcommittees. Subcommittees shall keep a similar journal. No report of committee or subcommittee discussions need be included. All hearings shall be recorded. The record of any hearing before any subcommittee shall be transcribed . . . . Promptly after completion of the committee's final report, the committee chairman shall certify the report and transmit it to the Administrator . . . .

§ 511.18. Publication and effective date of wage order.

Promptly after receipt of the committee report the Administrator shall publish the committee recommendations in the FEDERAL REGISTER and shall provide by order that the recommendations contained in such report shall take effect upon the expiration of 15 days after the date of such publication.

§ 511.19. Petitions.

Any interested person may at any time file a petition with the Administrator for an amendment to the regulations contained in this part or for an amendment to a wage order applicable to him. In view of the statutory requirement that the minimum rates of wages established by order under section 6 of the Act be reviewed by an industry committee at least biennially, substantial cause must be shown in support of any petition for an amendment of a wage order out of regular course . . . .

---

REPLY BRIEF FOR PETITIONERS

**United States Court of Appeals**

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 19,841

BONITA, INC., *et al.*,  
*Petitioners*

v.

W. WILLARD WIRTZ,  
SECRETARY OF LABOR, *et al.*,  
*Respondents*

ON PETITION FOR REVIEW OF A WAGE ORDER  
ISSUED BY THE ADMINISTRATOR OF THE  
WAGE AND HOUR DIVISION OF THE  
U.S. DEPARTMENT OF LABOR  
United States Court of Appeals  
for the District of Columbia Circuit

FILED JUN 2 1966

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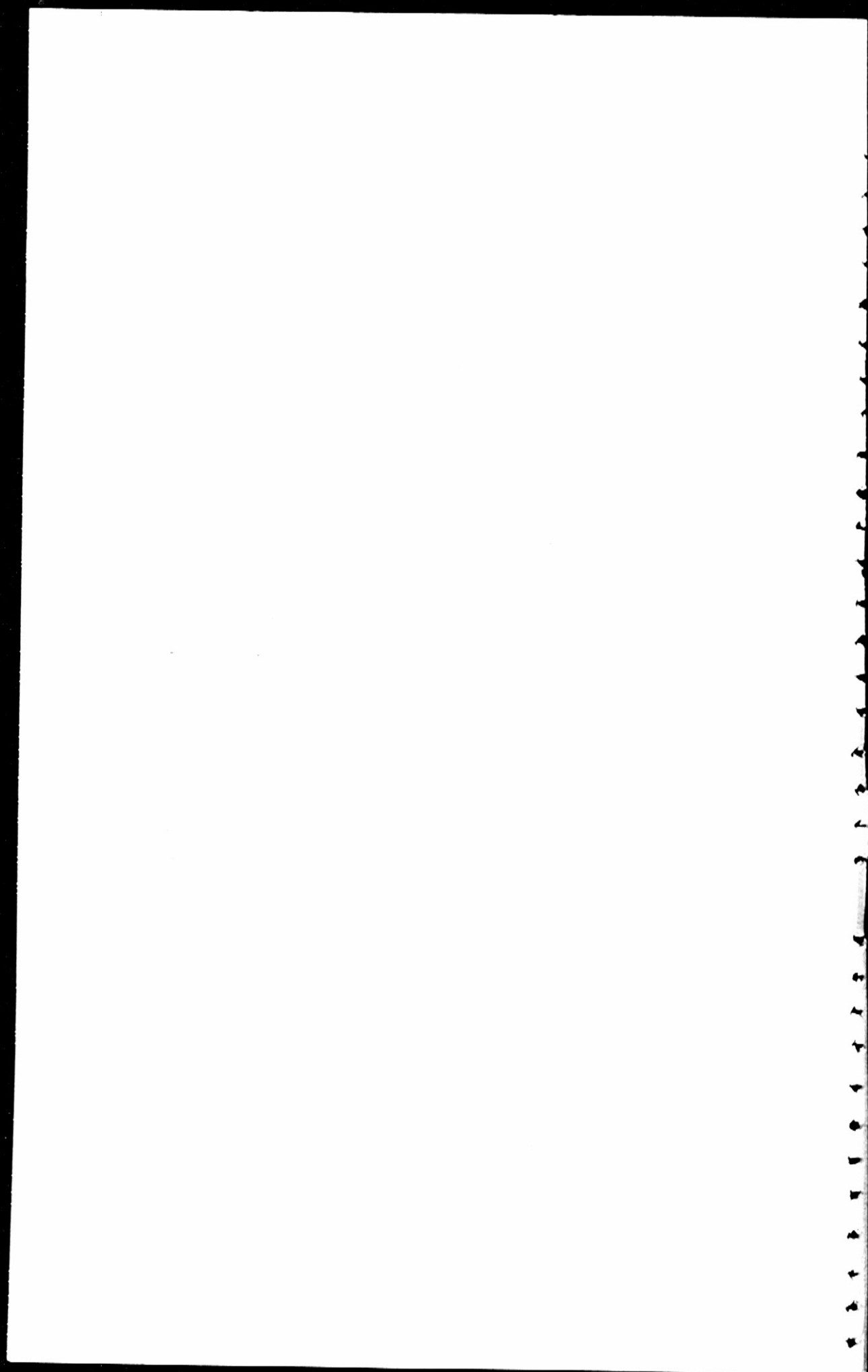
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29 C.F.R. § 511.16 .....	15, 16, 17

LEGISLATIVE MATERIALS:

S. Rep. No. 2313, 85th Cong., 2d Sess. (1958) .....	2
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MISCELLANEOUS:

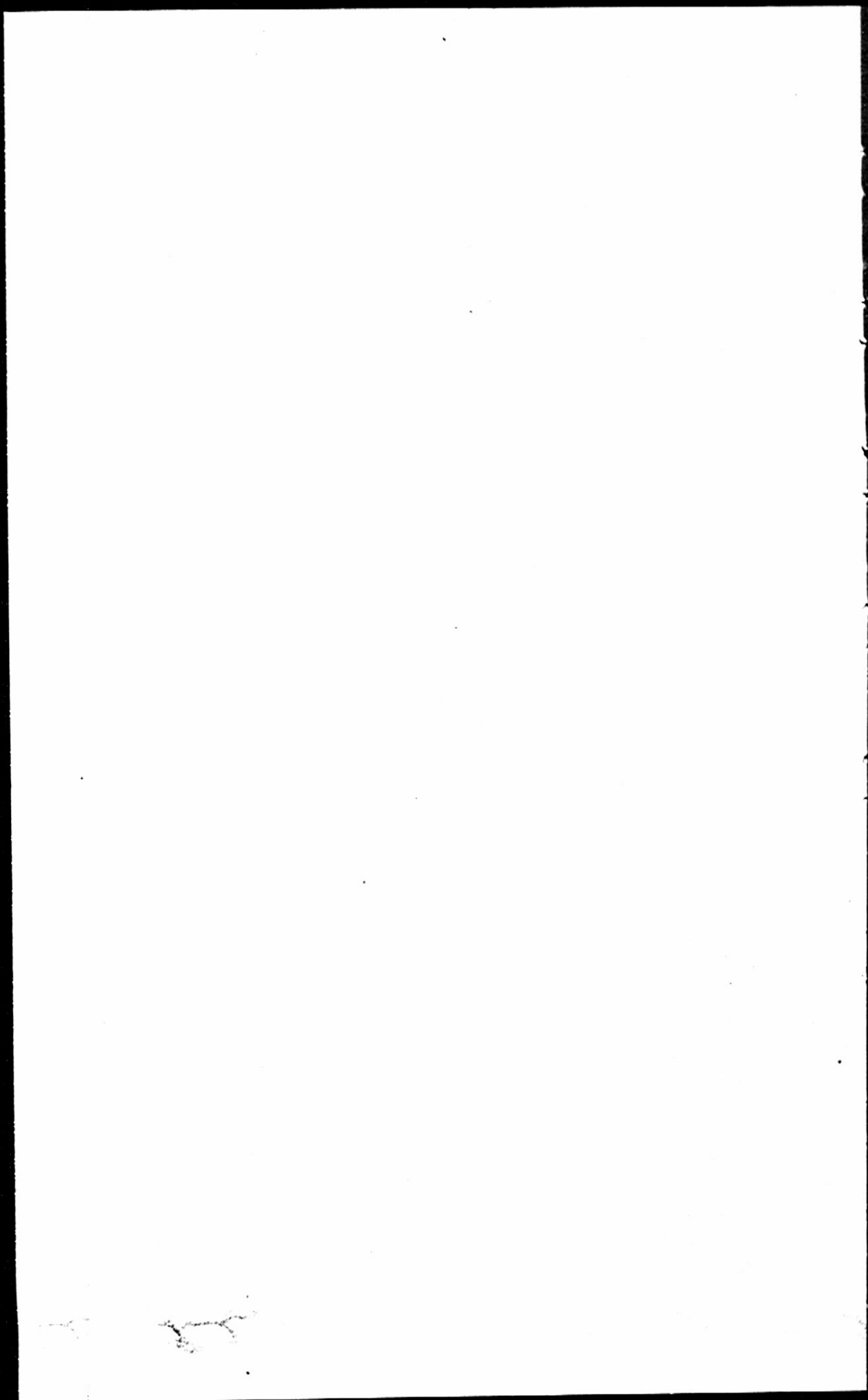
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U. S. Dep't Lab. Press Release No. 191 (Nov. 26, 1964) .....	6
U. S. Dep't Lab. Press Release No. 204 (Jan. 1, 1965) .....	6

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\* Cases or authorities chiefly relied upon are marked by asterisks.



# United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

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No. 19,841

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BONITA, INC., *et al.*,  
*Petitioners*

v.

W. WILLARD WIRTZ,  
SECRETARY OF LABOR, *et al.*,  
*Respondents*

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ON PETITION FOR REVIEW OF A WAGE ORDER  
ISSUED BY THE ADMINISTRATOR OF THE  
WAGE AND HOUR DIVISION OF THE  
U.S. DEPARTMENT OF LABOR

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## REPLY BRIEF FOR PETITIONERS

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### PRELIMINARY STATEMENT

Respondents' brief fails to meet any of the six issues presented to this Court. As the following discussion of each of these issues will demonstrate, respondents have either ignored the essential facts of record or have substituted their own conjecture for those facts.

## ARGUMENT

**I. The Secretary abused his discretion by ordering an interim wage review for this Puerto Rican industry.**

Respondents urge that the Secretary was justified in ordering an interim wage review during the 1964-1966 biennial period for this Puerto Rican industry. They acknowledge that in granting the Secretary discretion to order such interim wage reviews Congress intended that he would exercise his discretion only in "rare situations," but contradict themselves within the same sentence by denying that the Secretary's discretion "carried with it any unusual limitations." Resp. Br. 12.

Respondents' denial that Congress intended to limit the Secretary's discretion under Section 8(a) of the Act flouts the express legislative purpose of the 1958 amendment — elimination of the burden and expense of annual wage reviews because "economic changes occurring from one year to the next, in general, do not provide a sufficient justification for an alteration in wage rates." S. Rep. No. 2313, 85th Cong., 2d Sess. 2 (1958). In light of this express legislative purpose, the sole question here is whether the Secretary could reasonably have concluded that economic changes in this industry created the "rare situation" in which an additional wage review would be warranted. The evidence overwhelmingly shows that he could not have so concluded.

Respondents do not deny that the Secretary's decision to establish Industry Committee No. 75 was based in part on grossly inaccurate sweater shipment data. Nor do they deny that, before the Committee convened, the Secretary knew that the quantity of sweaters shipped from Puerto Rico to the mainland during the first five months of 1965 was 6% less than it had been in the first five months of 1964. J.A. 206-08. Respondents nevertheless assert that "[T]he data available to the Secretary . . . at the time the Committee convened, fully demonstrates that *the indus-*

try's output was expanding impressively." Resp. Br. 14, emphasis added.

Respondents assume that the Secretary was entitled to disregard the evidence of diminishing production in Puerto Rico because of their view that "volume of shipments" may also be expressed in value and weight figures. But given the diminishing production and profits in this industry, these value and weight figures were meaningless for purposes of the Secretary's determination.<sup>1</sup>

Respondents do not deny that the Secretary also relied upon inaccurate employment data, but they attempt to excuse that reliance by pointing out that the revised figures showed "increases over the same months in the preceding year." Resp. Br. 14. In confining himself to a comparison of current employment with the previous year alone, the Secretary completely ignored the trend indicated by the fact that each monthly figure for 1965 was smaller than the same month's figure in both 1961 and 1962. J.A. 212. In light of this downward trend, the revised 1965 employment figures clearly did not reveal such an extraordinary change as to justify an additional wage review.

In short, the evidence available to the Secretary prior to the hearing showed retrogression rather than progress. This was anything but the "rare situation" in which an interim wage review would be warranted.

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<sup>1</sup> See discussion at p. 21, *infra*. Respondents repeat in a footnote the misleading suggestion of the union witness at the hearing that the "value and weight figures were the more reliable indicators" of economic conditions in this industry because the "quantity figures . . . are often not carefully recorded and . . . may [represent] guessing." Resp. Br. 14, n. 5, J.A. 134-35. In point of fact, Shippers Export Declarations require all entries to be certified as "true and correct," and the preparation of fraudulent declarations is a criminal offense. J.A. 229-30. In the absence of proof of dishonesty, the Secretary was bound to accept each of the three figures recorded on Shippers Export Declarations — those for quantity, value, and weight — as accurate. J.A. 149-50.

By singling out this Puerto Rican industry for an additional wage review on the basis of inaccurate and incomplete economic data, and by failing to cancel the scheduled hearing when corrections revealed that no extraordinary changes in economic conditions had taken place, the Secretary clearly abused his discretion under Section 8(a) of the Act.<sup>2</sup>

**II. Respondents violated Sections 5(b) and 8(b) of the Act in appointing Messrs. Alper, DeLeo, Schwartz, and Sanchez to Industry Committee No. 75.**

Respondents appointed four members to Industry Committee No. 75 who represented organizations previously on record in support of the highest possible minimum wage for this industry in Puerto Rico. While acknowledging this fact (Resp. Br. 15, n. 8), respondents fail to deal with petitioners' contention that in appointing these four members, out of a total of six employer and employee members, respondents so distorted the role of the three disinterested public members as to undercut the Committee's investigating and hearing responsibilities and to preempt the Committee's wage-determining responsibilities, in violation of Sections 5(b) and 8(b) of the Act.

Respondents do not deny that the 1955 amendments to Section 5 of the Act divested both the Secretary and the

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<sup>2</sup> Although respondents also suggest that the Secretary's decision to order an additional review for the Puerto Rican industry during a biennial period is not subject to judicial review (Resp. Br. 12-13), respondents failed to include this issue in the parties' prehearing stipulation approved by this Court under Rule 38(k) of its General Rules. J.A. 231-232. By a prehearing order dated February 24, 1966, this Court ordered that such "stipulation shall control further proceedings in this case unless modified by further order of this court." J.A. 233. Since no modification has been granted, this issue is not properly before this Court and should therefore be disregarded. In any event, the cases cited by respondents are inapposite.

Administrator of all substantive responsibilities with respect to wage determination, and that the Act, as amended, delegates all such responsibilities directly to industry committees. Pet. Br. 19. Nor do respondents dispute the fact that the Act requires an industry committee to determine minimum wage rates only after careful consideration of evidence obtained through investigation and public hearing. Pet. Br. 17-19. Nor do respondents deny that Messrs. Alper, DeLeo, Schwartz, and Sanchez represented organizations on record in favor of a \$1.25 wage rate, that respondents knew this when they appointed them, and that Messrs. Alper, DeLeo, Schwartz, and Sanchez proposed and voted for a \$1.25 rate at the Committee's November 10, 1965 executive session. Pet. Br. 21, J.A. 15. Nor do respondents deny that they have appointed as mainland employer members of other industry committees persons who represented different industries and that never before have they appointed three officials of the same mainland union as employee members of an industry committee. Pet. Br. 16.<sup>3</sup> Finally, respondents do not dispute

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<sup>3</sup> Contrast respondent's assertion that "in an industry conducted both on the mainland and in Puerto Rico, the statute requires the representation of the viewpoint of mainland manufacturers" (Resp. Br. 17) with some of their recent appointments, in addition to those cited in Pet. Br. 22 n. 19.

In 1962, the President of a Providence, R.I. jewelry company was the mainland industry member on the Artificial Flower, Decoration, and Party Favor committee. U.S. Dep't Lab. Press Release No. 112 (Aug. 18, 1962).

In 1962 and again in 1964, a management consultant from Washington was the mainland industry member on the Textile and Textile Products committee, Hosiery committee, and Straw, Hair, and Related Products committee. U.S. Dep't Lab. Press Release Nos. 113, 183 (Sept. 8, 1962, Oct. 10, 1964).

In 1963, an agronomist for the American Sugar Cane League in New Orleans was the mainland industry member on the Hosiery committee, and Rubber Products committee. U.S. Dep't Lab. Press Release No. 149 (Sept. 27, 1963).

In 1964, a sweater manufacturer from Philadelphia was the mainland industry member on the Women's and Children's Un-

the fact that, but for the votes of all four of the members who were precommitted to the highest possible rate, the \$1.22 minimum could not have been adopted. Pet. Br. 21.

Contrary to respondents' assertion, petitioners did not and do not, argue that "affiliation with an organization which makes known its point of view is a disqualification only when that point of view favors higher wages." Resp. Br. 16. Indeed, petitioners stated:

[N]either the employer nor the employee members are expected to be "disinterested" or non-partisan. Their divergence of views, reflecting the economic interests of their constituents, is a vital element of tripartitism. Pet. Br. 20.

The Act is not violated by appointing employer or employee members who are known to be partisan or even pre-committed, so long as partisan or precommitted interests are evenly balanced, but the Act is violated by knowingly appointing a majority of employer and employee members who have identical precommitted positions. To dispel any doubt on this point, petitioners submit that Industry Committee No. 75 would also have been illegally constituted if, in addition to Messrs. Atkind and Titelman, respondents had appointed two other members representing organizations on record in support of the existing minimum wage.

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derwear committee and Handkerchief, Scarf, and Art Linen committee. U.S. Dep't Lab. Press Release No. 186 (Nov. 13, 1964).

In 1964, an attorney for National Women's Neckwear and Scarf Association in New York was the mainland industry member on the Men's and Boy's Clothing committee, Corsets, Brasieres and Allied Garments committee, and Children's Dress and Related Products committee. U.S. Dep't Lab. Press Release No. 191 (Nov. 26, 1964).

In 1965, a director of the Government-Industry Relations Division of the National Canners Association in Washington was the mainland industry member on the Paper, Paper Products, Printing and Publishing committee, and Stone, Clay, Glass, Cement and Related Products committee. U.S. Dep't Lab. Press Release No. 204 (Jan. 26, 1965).

Respondents' reliance upon *Opp Cotton Mills, Inc. v. Administrator*, 312 U.S. 126 (1941), reveals a lack of understanding of the difference between the issue in *Opp Mills* and the issue in the present case.

In *Opp Mills*, the Administrator had appointed a twenty-one member industry committee to recommend a minimum wage rate for the entire domestic textile industry. Appellants' argument was summarized by the Court as follows:

Petitioners argue that since the south had a mathematical preponderance in the Industry the Administrator was required by the statute to appoint a majority of each group, or at least a majority of the members of the Committee from that region. 312 U.S. at 150.

The Court held that the language of Section 5(b) directing the Administrator to give " 'due regard' to geographical considerations" did not require "mathematical geographical apportionment" of the committee's members. 312 U.S. at 151.

Contrary to respondents' assumption, petitioners do not contend that respondents failed to give "due regard" to geographical considerations or failed to use "mathematical geographical apportionment" in appointing the nine members of Industry Committee No. 75. Petitioners agree that the Act "calls for the exercise of discretion by the Administrator in selecting, *with the purposes of the Act in mind*, a committee in which the geographically distributed interests of the industry shall be fairly represented." 312 U.S. at 151, emphasis added. Petitioners contend, however, that the purposes of the Act as spelled out in Sections 5(b) and 8(b) precluded respondents from deliberately distorting the role of the disinterested public members on Industry Committee No. 75 by appointing a majority of employer and employee members representing organizations which were known to advocate a \$1.25 rate.

In the course of their discussion of *Opp Mills*, respondents state that because the greater part of the knitted outerwear industry is on the mainland, the Secretary would have been "justified . . . in appointing two employer members from the mainland." Resp. Br. 19. Thus it appears to be respondents' position that petitioners would have no cause to complain if respondents had nullified the role of all three public members and had, in effect, set the rate themselves by appointing a majority of the Committee who represented a single economic interest. Petitioners need not belabor the point that the Act's requirement of "due regard" to geographical considerations is not a license for respondents to usurp the statutory duties of Puerto Rican industry committees.

It should be noted that the Court in *Opp Mills* held that a hearing which meets "the demands of due process" was required "before the final order became effective." 312 U.S. at 152-53. A due process hearing was not required before the industry committee when *Opp Mills* was decided, because such a hearing was then available before the Administrator. But since 1955, when Congress eliminated the Administrator's independent review of industry committees' recommendations, the "demands of due process" must be satisfied in the quasi-judicial proceedings of industry committees. In *Texaco, Inc. v. FTC*, 118 U.S. App. D.C. 366, 371-72, 336 F.2d 754, 759-60 (D.C. Cir. 1964), *rev'd on other grounds*, 381 U.S. 739 (1965), this Court held that parties to a quasi-judicial proceeding before the Federal Trade Commission were denied due process when one of the five Commission members had prejudged the principal issue in the case. Similarly, the "demands of due process" were not satisfied in the present case when petitioners were compelled to present evidence to a nine-member committee on which four of six partisan members represented organizations committed in advance to the highest possible rate for this Puerto Rican industry.

The fallacy in respondents' position is further demonstrated by their final argument. They contend that "the

nature of Committee composition has not resulted in unfairness to petitioners" since Industry Committee No. 68-C, which met in 1964, was "very similarly composed" and recommended no increase in the minimum wage. Resp. Br. 19. What respondents fail to point out is that the decision of Industry Committee No. 68-C was made by a vote of five to four and that the four dissenters were three employee members and one employer member representing a trade association which supported a \$1.25 minimum wage. If one of the three public members had voted with the four dissenters and an increase had been recommended, the issue of the Committee's composition raised in this case would have been raised in connection with the proceedings before Committee No. 68-C.

In summary, respondents' appointment of Messrs. Alper, DeLeo, Schwartz, and Sanchez, without whose votes the \$1.22 rate could not have been adopted, violated Sections 5(b) and 8(b) of the Act. These appointments deprived petitioners of their statutory right to have their minimum wage rate based on an investigation and hearing by an industry committee on which partisan or pre-committed interests were evenly balanced, and not by respondents.<sup>4</sup>

### **III. The Committee's exclusion of five petitioners as parties to its proceedings was unlawful and prejudicial.**

On the basis of an interpretation of 29 C.F.R. § 511.13 contained in an unpublished letter from the Administrator to the Research Director of the ILGWU, the Commit-

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<sup>4</sup> Respondents assert in a footnote that petitioners' objections to the Committee's composition should be rejected because they were not presented to the Secretary before the Committee convened. Resp. Br. 18, n. 10. Because respondents failed to include this issue in the parties' prehearing stipulation approved by this Court under Rule 38(k) of its General Rules, this issue is not properly before this Court. See n. 2, *supra*. Moreover, the cases cited by respondents are not in point because they involved failure to object during an evidentiary hearing.

tee ruled that the financial statements of five petitioners were not "unabridged" and that, accordingly, these petitioners could not be "parties" to the Committee's proceedings.

Respondents seek to justify the Committee's action by asserting that the financial statements in question contained "obvious deficiencies," and by asserting that the Administrator's letter "reflected an existing administrative interpretation" which had been brought to the attention of petitioners' counsel before the present proceedings began. Resp. Br. 21, 24. They also assert that the Committee's action did not prejudice petitioners. These assertions are inconsistent with the facts in the following respects:

The financial statements in question were virtually identical in form to those submitted to and accepted as "unabridged" by industry committees conducting biennial wage reviews in 1962 and 1964, and by the Secretary of Labor and industry committees in 1961 and 1963 under a similar regulation governing "hardship appeals." J. A. 55-56. Moreover, the objections raised by Committee counsel in his letter of November 2 were identical to those previously overruled. J.A. 56. In submitting their financial statements to Industry Committee No. 75, these five petitioners acted in accordance with the interpretation previously given the regulation by the Secretary of Labor and by other industry committees; as they had done in the past, they omitted from their certified profit and loss statements and balance sheets certain schedules which were unrelated to the Committee's inquiry. J.A. 55-58.

Petitioners' counsel first learned of the existence of the Administrator's letter to Dr. Teper on November 8, 1965, the date the hearing before Industry Committee No. 75 commenced. J.A. 57-58. Dr. Teper's assertion — relied on by respondents — that the Administrator's letter had been cited at the 1964 hearing (Resp. Br. 22, n. 17)

was inaccurate; the transcript of the public hearing before Industry Committee No. 68-C reveals that the Administrator's letter had not been mentioned. Petitioner's counsel was not privy to discussions which may have taken place during that Committee's executive sessions, and there was no occasion for petitioners' counsel to examine the Journal of those proceedings. Nor did Committee counsel, in his letter of November 2, 1965 (J.A. 214-15), make any reference to the Administrator's interpretation.

Thus, when the existence of this unpublished interpretative rule was made known to petitioners' counsel for the first time on the morning the Committee began its public hearing, he had insufficient time either to consider its merits or to attempt to meet its new and stricter requirements.

Respondents state that Committee counsel merely "referred" to the Administrator's letter and argue that petitioners' claim that the letter should have been published "mistakenly assumes that there was an attempt to give that letter itself some force and effect of its own." Resp. Br. 20, 24. The facts do not support respondents' position. In setting forth the Committee's ruling with respect to these five petitioners, the Chairman stated:

Counsel was present and advised the Committee, mainly on grounds of lack of schedules . . . that therefore these were, from the point of view of the regulations as authoritatively interpreted, not unabridged statements. . . . We accepted the advice of counsel that they technically did not meet the requirements of the regulations as presently interpreted, and for that reason we did not accept them as parties. J.A. 62.

Committee counsel himself stated that, because of the Administrator's letter, he had "no choice" in his recommendation to the Committee. J.A. 57. In short, it was the Administrator's letter, not the language of the regulation

itself, which was expressly relied upon by Committee counsel and the Committee.<sup>5</sup>

If, as respondents allege, the letter "reflected an existing administrative interpretation" and "simply gives an obvious interpretation to the terms of the regulation" (Resp. Br. 24, 22), why did the Administrator not advise the 1961, 1962, 1963, and 1964 industry committees—all of which followed a contrary interpretation of the regulation—of what the "existing" and "obvious" interpretation was? And why did the Secretary of Labor, on at least two occasions, not follow this "existing" and "obvious" interpretation of a similar regulation?

If the Committee's exclusion of the five petitioners as parties was, as respondents assert, "entirely immaterial" and "a formality without substantive effect" (Resp. Br. 20, n.20), it is impossible to understand why Committee counsel recommended such action. In making these assertions, respondents overlook the express language of 29 C.F.R. § 511.13, which requires each employer wishing to testify "as to inability to adjust to a higher minimum wage rate" to submit "pertinent unabridged" financial statements to the Committee. When the Committee excluded five petitioners as parties on the ground that their financial statements were not "unabridged," doubt was unjustifiably cast upon their contention that they were unable to adjust to a higher minimum wage rate. The fact that petitioners' counsel testified in behalf of both "parties" and "witnesses" could not remove this stigma.

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<sup>5</sup> *Boesche v. Udall*, 112 U.S. App. D.C. 344, 346, 303 F.2d 204, 206 (D.C. Cir. 1962), *aff'd on other grounds*, 373 U.S. 472 (1963), is inapposite. In that case, this Court held that a long-standing interpretation of a regulation need not be published in the Federal Register, in view of the fact that it had been announced and applied in a previous adjudicative proceeding. In the present case, the interpretation given 29 C.F.R. § 511.13 by the Administrator in his letter differed substantially from past committee practice and had not been publicly announced.

The Committee's unlawful action also created an inference that all eighteen petitioners had been less than honest with the Committee. This unjustified inference, which was exploited by the union witness J.A. 63-64, 144-45, also reflected upon petitioners' argument that they would be unable to adjust to a higher minimum wage rate. While it is true that the consequences of the Committee's action are incalculable, it cannot be denied that they were substantially prejudicial.

Because the Administrator's interpretative ruling was not published in the Federal Register, it should not have been relied upon by Committee counsel or the Committee in excluding five petitioners as parties to the Committee's proceedings. All eighteen petitioners were substantially prejudiced by this unlawful action.

**IV. The Committee violated Section 511.12(b) of the regulations governing its procedure by adopting the \$1.22 minimum wage rate at its meeting on November 12, 1965, inasmuch as that meeting was called for another purpose.**

Respondents' argument that the Committee's wage recommendation is valid because it was adopted by a majority of the Committee with a quorum present takes no account of the fact that the wage recommendation was adopted at a meeting called for another purpose, in flagrant violation of the regulations governing the Committee's proceedings.

29 C.F.R. § 511.12(b) provides:

A committee may adjourn its meeting . . . from time to time . . . and meet again . . . pursuant to the terms of adjournment, or on call of its chairman or the Administrator.

Respondents do not deny that the Committee's meeting on November 10, 1965 was "adjourned," after the Committee adopted a minimum wage rate of \$1.20. Resp. Br. 26, 27. But in an attempt to make the Committee's sub-

sequent adoption of a higher rate on November 12 appear consistent with Section 511.12(b), respondents create their own "terms of adjournment" of the November 10 meeting from an abbreviated statement in the Journal of the Committee's proceedings. The Journal states:

The Committee decided to meet again at 10:30 a.m. on Friday, November 12th, to discuss and consider approval of the Report, Findings of Fact, and Recommendations. J.A. 16.

Respondents take this to mean that:

The purpose [of the November 12 meeting] encompasses the entire scope of business which remained to be accomplished after the public hearing had ended, and which had merely been commenced but not completed at the November 10 meeting. Resp. Br. 30.

Respondents' interpretation of the entry in the Journal is repeatedly contradicted by the record.

In ruling on Mr. Yagoda's motion for a \$1.22 rate on November 12, Chairman Horlacher specifically spelled out the "terms of adjournment" of the November 10 meeting:

This motion is inappropriate and improper, in view of the fact that today's meeting of the committee was convened for the purpose of reviewing this draft report and making such modifications in it as seem appropriate and signing it, and not for the purpose of any reconsideration of the wage which was fixed by action of the committee on Wednesday. J.A. 25.

[T]oday's meeting . . . if it were to reopen the question of the wage determination, would not be a meeting pursuant to the terms of adjournment, which were that the committee would adjourn and sit today for the purposes of the formality of approving and signing the report. . . . J.A. 25.<sup>6</sup>

<sup>6</sup> The Chairman's independent recollection of the terms of the Committee's adjournment on November 10 is similarly stated in his affidavit attached to Petitioners' Motion for Stay: "I adjourned the meeting, stating that the committee would reconvene at 10:30 A.M. November 12 . . . for the purpose of editing a

This statement was never challenged by any Committee member or by any Labor Department employee, including Committee counsel, who were present at the Committee's meetings on November 10 and November 12.

The Chairman's statement on November 12 makes it clear that he ruled Mr. Yagoda's motion out of order because he considered it improper under Section 511.12(b) of the regulations. J.A. 24-26.<sup>7</sup> Moreover, there is no evidence to support respondents' assertion that Messrs. Yagoda, Alper, DeLeo, Schwartz, and Sanchez overruled the Chairman because they disagreed with his statement of the terms of adjournment on November 10. Resp. Br. 31 n.29. On the contrary, they voted to overrule the Chairman because they erroneously believed that they could change the recommended rate despite the terms of adjournment and despite the requirements of Section 511.12(b) of the regulations.<sup>8</sup>

Furthermore, the Chairman's statement was consistent with 29 C.F.R. § 511.16 (1965), which directs industry

draft Report and Findings of Fact prepared by the staff economist in light of the Committee's action in recommending a \$1.20 rate and for the purpose of signing the Report and Findings of Fact." Pet. Br. App. C, 6.

<sup>7</sup> In his affidavit attached to petitioners' Motion for Stay, the Chairman recalled: "I ruled [Mr. Yagoda's] motion out of order, calling attention to Section 511.12(b) of the Labor Department's regulations. . . . I stated that this executive session had been called for the purpose of adopting the form of the Committee's Report and Findings of Fact and that, therefore, the motion to reconsider the rate was not in order." Pet. Br. App. C, 7.

<sup>8</sup> 29 C.F.R. § 511.9 (1965)—which subjects decisions of the Chairman, upon objection, to approval by a committee majority—begins with the express proviso "Except as otherwise provided in this part. . . ." This proviso preserves the Wage and Hour Administrator's rule-making authority under Section 5(c) of the Act by preventing industry committees from altering the terms of the regulations by a simple majority vote. Thus, although a committee chairman's ruling is not always beyond challenge, when his ruling conforms with the express language of another regulation, it cannot be set aside by a majority vote under § 511.9.

committees "promptly . . . [to] resolve the issues before it and prepare a report containing . . . findings of fact and recommendations." Pursuant to this regulation, the Committee promptly resolved the issue of the appropriate minimum wage on November 10; it met again on November 12 for the purpose of preparing its report.

The Chairman's statement is also consistent with the November 10 Journal entry quoted above. The "Report, Findings of Fact, and Recommendations" cited in the Journal is the "report" referred to in Section 511.16, which each committee is required to prepare and transmit to the Wage and Hour Administrator. The Journal's statement that the Committee decided to meet to "discuss and consider" that document on November 12 means precisely what the Chairman said it meant: the Committee decided to meet to review a draft of its report, make editorial changes, and sign it.

Finally, the Journal for November 10 reveals that at least three committee members, Messrs. Titelman, Atkind, and DeLeo, stated that they would file dissenting opinions, thereby demonstrating their understanding that the Committee's adoption of the \$1.20 rate was not subject to reconsideration. J.A. 16.

It is thus clear that the terms of the November 10 adjournment spelled out by the Chairman without contradiction prescribed the scope of the Committee's lawful action on November 12.<sup>9</sup> When five Committee members chose to overrule the Chairman they violated Section 511.12(b).

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<sup>9</sup> Respondents cite numerous cases to support the propositions that legislative bodies may reconsider action taken during a session and that an adjournment is a continuation of a regular meeting, but respondents themselves acknowledge that these propositions are controlling only "in the absence of any contrary provision in the . . . regulations. . . ." Resp. Br. 28-29. Section 511.12(b) is a regulation containing such a "contrary provision," which was binding upon the Committee. 29 C.F.R. § 511.1 (1965).

**V. Two Committee members were not given adequate notice of the changed purpose of the Committee's November 12 meeting.**

Respondents' assertion that Messrs. Atkind and Titelman had adequate notice that the \$1.20 rate might be reconsidered on November 12 (Resp. Br. 31) is not true. When the Committee adjourned its meeting on November 10, it was to meet again on November 12 for the purpose of editing a draft report containing the \$1.20 recommendation. J.A. 25. Both Messrs. Atkind and Titelman had voted against the \$1.20 rate. Indeed, they, and also employee member DeLeo, had expressed their intention to file a dissenting opinion. J.A. 16. In light of the stated purpose of the meeting on November 12, and in light of the fact that the regulations require only the signatures of members approving the Committee's recommendation and allow an additional three days for the filing of dissents,<sup>10</sup> Messrs. Atkind and Titelman were correct in concluding that their presence would not be necessary.<sup>11</sup>

When the Committee convened on the morning of November 12. Mr. Titelman was in New York and Mr. Atkind was at his company's plant in Bayamon, Puerto Rico. J.A. 34, 37. Neither had been given any notice that the \$1.20 rate might be reconsidered by the Committee.

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<sup>10</sup> 29 C.F.R. § 511.16 (1965)

<sup>11</sup> In fact, both Messrs. Atkind and Titelman were advised by the Chairman, and each was advised by a responsible Labor Department official, that they need not attend the meeting on November 12. Pet. Br. App. C, 6-7, App. D, 9, App. E, 11. Regional Attorney Marks' account of the "gist" of a conversation overheard between Regional Director Meyers and Mr. Titelman at the close of the meeting on November 10, to the effect that Mr. Titelman was urged to attend the meeting on November 12 (J.A. 34), is clearly hearsay and should not be credited. The Regional Attorney's account is also contrary to Mr. Titelman's sworn statement: "I was advised both by Chairman Horlacher and Regional Director Meyers of the San Juan office of the Wage and Hour Division that my presence would not be required." Pet. Br. App. E, 11.

It cannot seriously be contended that Committee counsel's telephone calls to Messrs. Atkind and Titelman on November 12 either constituted adequate notice of Mr. Yagoda's proposal to increase the wage rate previously adopted or provided an opportunity for Messrs. Atkind and Titelman to participate in the deliberations on that motion. The Chairman expressed his concern about proceeding to reconsider the \$1.20 decision on the basis of such notice to members Atkind and Titelman:

CHAIRMAN HORLACHER: Mr. Marks, it is the Chair's impression that what has been done in telephoning Mr. Titelman and Mr. Atkind does not, in the opinion of the Regional Attorney, constitute due notice and adequate opportunity for them to participate in this meeting. I think it is rather important that the counsel indicate whether this impression is correct or not. J.A. 36.

The Regional Attorney replied:

MR. MARKS: Mr. Chairman, as I say, I do not believe that the regulations would require them to be here. However, it is our honest and earnest desire to dot every "I" and cross every "T," so that in the event that the action of this committee is appealed by any of the parties to the appropriate United States Court of Appeals, that this committee will have shown by its action that it has done not just everything that is required of it by the regulations, but has made every effort whatsoever . . . to have everybody present here. J.A. 36-37.

As the Regional Attorney himself stated, the telephone calls made to Messrs. Atkind and Titelman were designed to make a record favorable to the position of the Department of Labor in the event of an appeal to this Court. It is inconceivable that, when Committee counsel spoke to Mr. Titelman at noon on November 12, he actually expected him to return from New York to Puerto Rico to participate in that day's session. And although Committee counsel acknowledged that Mr. Atkind had indicated his intention to attend "some time" on November 12, the Committee nonetheless adopted Mr. Yagoda's motion some two hours prior to the normal close of the business day. J.A. 37, 42.

Respondents omitted from their summary of the events of November 12 any reference to public member Yagoda's effort to postpone the Committee's action on his own motion to reconsider the \$1.20 decision.<sup>12</sup> Mr. Yagoda moved:

acting under 511.12(b) of the regulations that this committee have an interim adjournment for the purpose of being reconvened as soon as practically possible with the full participation of the committee to conclude the business before us. J.A. 33.

Mr. Yagoda's proposal clearly indicated his view that Messrs. Atkind and Titelman should take part in discussion of his motion to recommend a \$1.22 rate, but his motion for an interim adjournment lost for lack of a second. Moreover, Mr. Yagoda's position was identical to that expressed by respondents' Regional Attorney and Committee counsel. The Regional attorney stated:

[T]he Department would very much like to see a full complement of the committee present for the continuation of deliberations and voting. These are our strongest recommendations to the committee. J.A. 36.

Committee counsel stated:

With respect to . . . the absent committee people, as I said, they may have important comments to make on this matter. It is the Department's position that the committee should give consideration to giving full opportunity and notice for them to appear so that they may have a chance, a fair chance, to make such comment as they want to make. J.A. 32.

Despite Mr. Yagoda's view and despite the Department of Labor's recommendations, Messrs. Atkind and Titelman were not given adequate notice of the changed purpose

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<sup>12</sup> Contrary to respondents' assumption (Resp. Br. 30-31), petitioners do not contend that the committee had no right to reconsider the \$1.20 rate. Petitioners do contend, however, that the \$1.20 rate could be reconsidered only at a meeting called for that purpose, or after adequate notice of an intention to reconsider had been given to all committee members.

of the Committee's meeting on November 12. Petitioners—eighteen of the nineteen companies in this Puerto Rican industry—were thereby unlawfully deprived of their statutory right to representation in the determination of their industry's minimum wage rate.

**VI. The Committee's minimum wage recommendation is not supported by substantial evidence.**

In arguing that the Committee's recommendation is supported by substantial evidence, respondents find it necessary to supplement the Committee's sparse findings of fact with their own speculative rationale. Their speculation cannot serve as a substitute for substantial evidence on the whole record. *Cf. NLRB v. Metropolitan Life Insurance Co.*, 380 U.S. 438, 444 (1965) ("[T]he integrity of the administrative process requires that 'courts may not accept appellate counsel's post hoc rationalizations for agency action. . . .'").

*A. The Committee ignored the evidence that this Puerto Rican industry does not enjoy a competitive advantage over the mainland industry.*

Respondents assert that "the basic consideration" supporting the Committee's conclusion that a five-cent minimum wage increase would not substantially curtail employment "is the fact that a significant competitive advantage did exist for Puerto Rico manufacturers. . . ." Resp. Br. 33. The Committee made no such finding of fact.

The evidence before the Committee demonstrates that a competitive advantage favoring Puerto Rican manufacturers does not exist. If it did, Puerto Rican manufacturers would have shipped increasing numbers of sweaters to the mainland, and their profits would have risen. On the contrary, during the three years prior to August, 1965, Puerto Rican shipments declined in approximately the same proportion as production increased on the mainland, and the Puerto Rican industry's profits declined

drastically while mainland profits increased. Pet. Br. 43, 46.<sup>13</sup>

Respondents attempt to deprecate the fact that the number of sweaters shipped from Puerto Rico to the mainland declined approximately 19% during the three years prior to August, 1965 by referring to "notable increases" in the value and weight of those sweaters. Resp. Br. 35. These value and weight figures are meaningless for purposes of this proceeding. "Value" is no more and no less than the cost of a product plus any profit or minus any loss. J.A. 82-84. Thus, when profits as well as production are declining, increased "value" only shows that costs have risen. As to "weight," the union witness himself pointed out that "[I]t can be argued that the goods are heavier in character, that you are producing more bulkies, that you are producing heavier sweaters. . . ." J.A. 136. In any event, since no figures were available with respect to the value or weight of the increasing quantity of production in the mainland, it was impossible for the Committee to make any meaningful assessment of the Puerto Rican value and weight figures before it.<sup>14</sup>

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<sup>13</sup> Respondents assert that there has been no steady decline in the Puerto Rican share of the mainland market because the full-fashioned sweaters produced in Puerto Rico "constitute only a small fraction of knit outerwear production on the mainland." Resp. Br. 36. But respondents ignore the obvious fact that full-fashioned sweaters and the cut-and-sewn type predominantly produced on the mainland compete with each other in the same market. Indeed, sweater shipments data submitted by the Wage and Hour Division to the Committee are not broken down as to type. J.A. 206.

<sup>14</sup> In apparent recognition of the weakness of their case, respondents have included in their brief, and asked this Court to note, sweater shipment figures for the full year 1965, knowing that such figures for the last four months of 1965 were not before Industry Committee No. 75 and are not part of the record in this proceeding. Resp. Br. 35 n.34, J.A. 206. These figures will be considered by the next sweater industry committee, together with all other then relevant data.

The Committee's Report, Findings of Fact, and Recommendations contain no findings regarding profitability. Respondents, however, now contend that evidence regarding profitability left the Committee "with little choice but to recommend a rate at least as high as the one selected." Resp. Br. 44. Respondents support this contention by asserting that the Committee could properly have disregarded the audited profit and loss data of five of the industry's nineteen companies. Resp. Br. 38-43. In effect, respondents have reconstituted the industry.<sup>15</sup> Yet, respondents hardly need be reminded that Section 8(b) of the Act requires each industry committee to "recommend the highest minimum wage rates for the *industry* which it determines . . . will not substantially curtail employment in the *industry*, and will not give any *industry* in Puerto Rico a competitive advantage. . . ." (Emphasis added.) The five Gordonshire companies, which were parties to the proceeding but which respondents would have the Committee disregard, employed 27% of the covered employees in the industry as of August 15, 1965. J.A. 212, 213. If the Committee ignored the profit status of these companies in making its wage recommendation, it violated Section 8(b) of the Act.

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<sup>15</sup> For example, respondents state that the Committee could have excluded these five companies in comparing this industry's operating profits as a per cent of sales with that of the mainland industry. Resp. Br. 39. At a later point in their brief, respondents exclude four of the nineteen companies, constructing still another industry, in computing an alleged earnings-on-investment figure. Resp. Br. 44.

In arriving at their own profit figures, respondents make the unwarranted claim that Glamourette Fashion Mills, a company whose audited financial statements reveal a net loss of \$10,205.15, showed "operating profits" in 1964. Resp. Br. 39, n. 38. But see J.A. 200-02.

Respondents' elaborate "explanations" of the substantial losses of three Gordonshire companies (Resp. Br. 40-43) are also unwarranted and find no support in the record. These "explanations," which were advanced by the union witness at the hearing, were characterized by the union witness himself as "my suspicion" and "a hypothesis." J.A. 119.

The hard fact is that profits in this Puerto Rican industry have decreased dramatically in the past four years—both absolutely from \$774,725 to \$306,341 and as a per cent of sales from 4% to 1.6%. J.A. 194, 52.

Finally, if the Puerto Rican industry has a competitive advantage, why have mainland companies not taken advantage of it? No mainland company has opened a new facility in Puerto Rico since 1957. J.A. 159-60, 70, 102. The number of mainland firms with Puerto Rican affiliates dropped from fifteen in August, 1959 to eight in August, 1965. J.A. 181-86, 74. Neither Island Knitting, which closed in 1963, nor Knitco, Inc., which closed in 1964, was able to find a purchaser. J.A. 72-73, 74. The Committee and respondents both failed to take these facts into account.

*B. The Committee ignored evidence that an increase in the current minimum would result in substantial curtailment of employment in this industry.*

Respondents' assertion that "there is no evidence that increases in minimum wages in Puerto Rico have at any time caused curtailment in employment" (Resp. Br. 34) is not supported by the record.

The revised employment table submitted to the Committee by the Wage and Hour Division shows a marked decline in employment following implementation of the most recent wage increases on December 6, 1962 and November 3, 1963. J.A. 212. Between September 18 and December 18, 1962, employment declined by 33%. In two weeks between November 1 and November 15, 1963, employment declined by 6%. *Ibid.* Moreover, a startling case in point was called to the Committee's attention. Knitco, Inc. employed 142 covered employees on August 1, 1959. J.A. 182. In both 1961 and 1962, Knitco submitted affidavits to industry committees stating that an additional wage increase would jeopardize its exist-

ence. After three minimum wage increases in as many years, Knitco closed down in 1964, unable to find a purchaser. J.A. 73.

The facts which the Committee ignored show that average employment in the Puerto Rican industry for the first eight months of 1965 was 5.8% below the yearly average for 1959, 5.3% below the yearly average for 1961, and 5.5% below the yearly average for 1962 — in striking contrast to employment trends in this industry on the mainland and in related industries in Puerto Rico. J.A. 212, 171, 79.<sup>16</sup> These facts, together with the evidence of declining production and profits discussed above, demonstrate that this industry cannot sustain a five-cent minimum wage increase without substantially curtailing employment.<sup>17</sup>

In summary, the evidence before Industry Committee No. 75 conclusively demonstrated that the current minimum of \$1.17 an hour has not given and is not likely to give this Puerto Rican industry a competitive advantage over the industry on the mainland, and that any increase in the current minimum will result in a substantial cur-

<sup>16</sup> Respondents attempt to justify the Committee's failure to consider present employment in relation to these higher average figures by quoting an excerpt from 29 C.F.R. § 511.11 (1965). Resp. Br. 37. That regulation specifically directed the Committee's attention to "employment . . . conditions and trends in Puerto Rico . . . particularly since the promulgation of the presently applicable wage order, including such items as *present and past employment*. . . ." (Emphasis added.) In view of this provision, the Committee's reliance upon selective employment data is inexcusable.

<sup>17</sup> Respondents' assertion that a five-cent increase would "directly" affect the industry's wage bill by no more than 2.8% (Resp. Br. 43) is misleading, for it fails to take account of increases which would have to be given employees now earning more than the minimum in order to maintain long-established wage differentials. The Wage and Hour Division's Economic Report shows that average straight-time earnings increased in precisely the same amount as the minimum wage during the past five years. J.A. 155, 49.

tailment of employment. The Committee's Report, Findings of Fact, and Recommendations ignored this evidence, and the Committee's recommended rate is not supported by substantial evidence.

# CONCLUSION

For the foregoing reasons, this Court should set aside the Administrator's order establishing a \$1.22 minimum wage for this Puerto Rican industry.

Respectfully submitted,

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June 2, 1966.

BRIEF FOR RESPONDENTS

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**United States Court of Appeals**  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

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No. 19,841

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BONITA, INC., ET AL., PETITIONERS

v.

W. WILLARD WIRTZ, SECRETARY OF LABOR, ET AL.,  
RESPONDENTS

---

ON PETITION FOR REVIEW OF A WAGE ORDER ISSUED  
BY THE ADMINISTRATOR OF THE WAGE AND HOUR  
DIVISION OF THE U.S. DEPARTMENT OF LABOR

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United States Court of Appeals,  
for the District of Columbia Circuit

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FILED JUN 2 1966

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## STATEMENT OF QUESTIONS PRESENTED

1. Whether the Secretary of Labor abused his discretion under Section 8(a) of the Fair Labor Standards Act ("the Act") in establishing Industry Committee No. 75 for the Sweater and Knit Swimwear Industry in Puerto Rico during a biennial period.

2. Whether the Secretary of Labor's appointment of Herbert Alper, Joseph Schwartz, Alberto E. Sanchez and Emile J. DeLeo as members of Industry Committee No. 75 was contrary to Sections 5 and 8 of the Act.

3. Whether Industry Committee No. 75 violated Section 3(a) of the Administrative Procedure Act and Sections 305 and 307 of the Federal Register Act in ruling that five of the eighteen petitioners be excluded as parties to the Committee proceedings.

4. Whether Industry Committee No. 75 violated Section 5 of the Act and the governing regulations in recommending a minimum wage rate of \$1.22 an hour at its executive session on November 12, 1965.

5. Whether the Report, Findings of Fact, and Recommendations of Industry Committee No. 75 is supported by substantial evidence.

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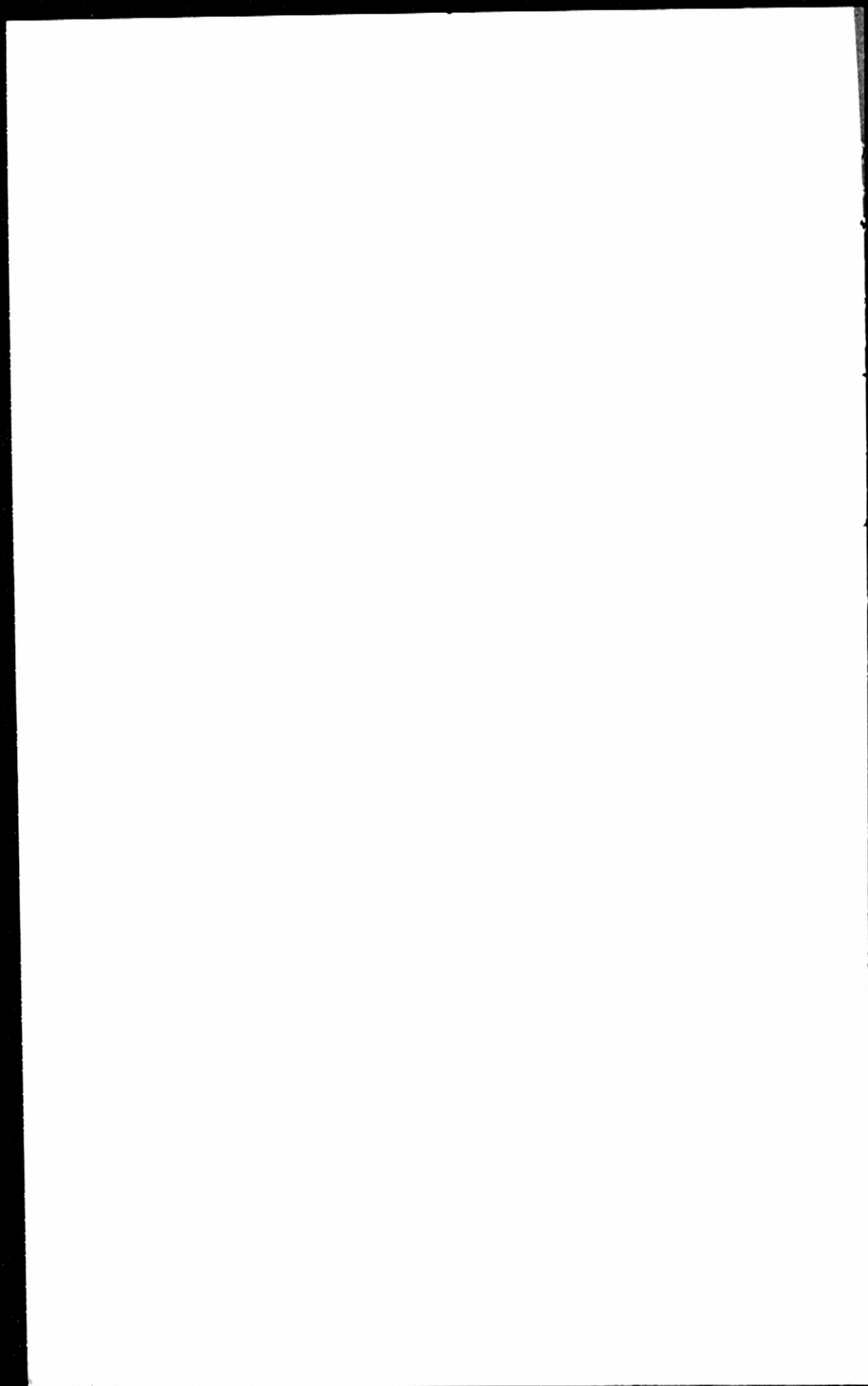
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IN THE  
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No. 19,841

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BONITA, INC., ET AL., PETITIONERS

v.

W. WILLARD WIRTZ, SECRETARY OF LABOR, ET AL.,  
RESPONDENTS

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*ON PETITION FOR REVIEW OF A WAGE ORDER ISSUED  
BY THE ADMINISTRATOR OF THE WAGE AND HOUR  
DIVISION OF THE U.S. DEPARTMENT OF LABOR*

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**BRIEF FOR RESPONDENTS**

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**COUNTERSTATEMENT OF THE CASE**

This is an action brought by 18 members of the Sweater and Knit Swimwear Industry in Puerto Rico for review, under Section 10(a) of the Fair Labor Standards Act,<sup>1</sup> of a wage order for that industry issued by the Administrator of the Wage and Hour and Public Contracts Divisions of the Department of Labor. The peti-

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<sup>1</sup> Act of June 25, 1938, c. 676, 52 Stat. 1060, as amended; 29 U.S.C. 201 *et seq.*

tion seeks to set aside the wage order which raised the previous \$1.17 minimum hourly rate to \$1.22 for employees in the industry who are covered by the Act.

### Relevant Statutory Provisions

Section 6(a) of the Fair Labor Standards Act provides that every employer shall pay to each of his employees who is engaged in commerce or in the production of goods for commerce wages of not less than \$1.15 an hour during the first two years from the effective date of the Fair Labor Standards Amendments of 1961 (September 3, 1961), and not less than \$1.25 an hour thereafter. However, with respect to employees in Puerto Rico and the Virgin Islands covered by the Act, administrative machinery is provided in Sections 5 and 8 of the Act for establishing wages in various industries which may be lower than the statutory minimum, but with the goal of reaching "as rapidly as is economically feasible without substantially curtailing employment the objective of [\$1.25 an hour] \* \* \* in each such industry" (Section 8(a)).

The Act directs that at least every two years the Secretary of Labor<sup>2</sup> convene an industry committee or separate industry committees to review the minimum rates previously established for those industries which have not yet reached the statutory minimum (Section 8(a)). However, the Secretary, in his discretion, may order an additional review during any such biennial period (*ibid.*). An industry committee, which is to be composed equally of representatives of the public, employers in the industry and employees in the industry (Section 5(b)), is directed to investigate conditions in the industry and

<sup>2</sup> The Act originally vested this responsibility in the Wage and Hour Administrator. Thereafter, by virtue of Reorganization Plan No. 6 of 1950, 64 Stat. 1263, all functions under the Act were transferred to the Secretary of Labor who by General Order 45-A of May 24, 1950 (15 F.R. 3290) delegated back to the Administrator most of the functions previously exercised by him under the Act. The authority to initiate industry committee proceedings and to appoint their members, however, was retained by the Secretary (29 C.F.R. 511.2, 511.3).

to recommend to the Administrator the highest minimum wage rates for the industry which it determines, having due regard to economic and competitive conditions, "will not substantially curtail employment in the industry," and "will not give any industry in Puerto Rico or the Virgin Islands a competitive advantage over any industry" elsewhere in the United States (Section 8(b)). The statute (Section 5(c)) and regulations (29 C.F.R. 511.9) provide that two-thirds of the members of a committee shall constitute a quorum and that approval by a majority of the committee is necessary for the report which it is required to file with the Administrator under Section 8(d) of the Act.

Upon the filing of the committee's report containing its findings of fact and recommendations the Administrator publishes such recommendations in the Federal Register and provides by order that the recommendations shall take effect upon the expiration of 15 days after the date of such publication (Section 8(d)).

Under Section 10(a) of the Act, any person aggrieved may petition an appropriate Court of Appeals for its modification or setting aside. Court review is limited to questions of law, and findings of fact by the industry committee when supported by substantial evidence "shall be conclusive."

#### Proceedings in the Instant Case

The minimum wage rate of \$1.17 an hour which was in effect at the time of the proceedings herein had been in effect since November 3, 1963, having been established by a special review committee requested by the industry in order to avoid a \$1.23 minimum rate which would otherwise have gone into effect on September 3, 1963 by virtue of the mandatory 10% increase provided for by Section 6(c)(B) of the Act.<sup>3</sup> A subsequent regular bien-

<sup>3</sup> Section 6(c)(C) provides such relief for Puerto Rican employers who may apply to the Secretary for the appointment of a review committee to recommend minimum rates to be paid in lieu of the statutory 10% increase contained in Section 6(c)(B).

nial review was conducted in November 1964 by Industry Committee 68-C, which voted 5 to 4 to recommend no increase in the \$1.17 rate (29 F.R. 17812).

On August 13, 1965, the Secretary of Labor, pursuant to his discretionary authority under Section 8(a), and "in consideration of changes in economic conditions in the sweater and knit swimwear industry in Puerto Rico," established Industry Committee 75 to conduct this additional review (30 F.R. 10114).

Pursuant to the regulation governing the admission of parties to industry committee proceedings (29 C.F.R. 511.8), the International Ladies' Garment Workers' Union, as well as 18 out of 19 manufacturers comprising the industry in Puerto Rico, filed prehearing statements with the Regional Director of the Wage and Hour Division. As part of such prehearing statements, employers wishing to participate as parties and claiming inability to pay the \$1.25 minimum wage under Section 6(a)(1) of the Act, or to adjust to a higher minimum rate than prescribed by any applicable wage order, are required to include "pertinent unabridged profit and loss statements and balance sheets for a representative period of years for the individual firm or firms involved" (29 C.F.R. 511.13). Prior to the public hearing the financial statements submitted by five firms pursuant to this regulation were found by the Committee to be abridged. These firms were accordingly excluded as "parties" but were invited to participate as witnesses (J.A. 8-10). All 18 firms were represented by one witness, and evidence as to the excluded firms was introduced and admitted on the same basis as that of the firms which had qualified as parties.

Public hearings were held by the committee in San-turce, Puerto Rico on November 8, 9 and 10. The Committee heard testimony from an economist employed by the Wage and Hour Division with respect to the data presented in the Division's economic report (Exhibits 6, 7, 15); testimony of the industry representative with re-

spect to the position of the 18 firms favoring retention of the \$1.17 minimum; and testimony of the union witness regarding the union's position that the minimum should be increased to \$1.25. Full opportunity was afforded for cross-examination of witnesses and submission of rebuttal evidence.

At the close of the public hearing, the Committee met in executive session on the afternoon of November 10 to begin its deliberations. After a number of motions regarding recommended minimum wage rates failed to pass, a motion to recommend a rate of \$1.20 carried by a vote of 5 to 4 (J.A. 15-16). The Committee then adjourned "to meet again at 10:30 a.m. on Friday, November 12 to discuss and consider approval of the Report, Findings of Fact, and Recommendations" (*ibid.*).

At the designated hour on November 12, six members of the Committee assembled and waited until 12:40 p.m. for the remaining members—public member Villaronga and employer members Titelman and Atkind—to appear (J.A. 17). With the arrival of Villaronga (who left shortly thereafter, pleading illness), the Committee convened (*ibid.*), and began to consider a draft report containing proposed findings and recommendations. A motion was made by public member Yagoda—who had previously made the successful motion favoring the recommendation of a \$1.20 rate—to substitute a rate of \$1.22 in the proposed findings and recommendations, explaining that the recess had afforded him an opportunity for further study of the evidence which had altered his views as to the appropriate rate (J.A. 18, 23-24). The chairman ruled this motion out of order, subject to objection by a majority of the members as provided by the regulations (29 C.F.R. 511.9)

After the Committee was advised regarding unsuccessful efforts to bring the two absent employer members to the meeting (see *infra*, p. 28) it voted 5 to 1 to overrule the chairman's ruling, a statutory quorum being present (J.A. 20). A vote was then taken on the motion to change the recommended wage rate to \$1.22, and that

motion carried by the same majority (J.A. 20). All six members then voted for the adoption of the report as modified, with the chairman dissenting only as to the wage rate (*ibid.*).

As required by Section 8(d), the Committee filed its report embodying its findings and recommendations with the Administrator who published the recommendations in the Federal Register on December 10, 1965 (30 F.R. 15292) and provided that they become effective December 26, 1965.

### STATUTES AND REGULATIONS INVOLVED

The relevant provisions of the Fair Labor Standards Act and Regulations of the Administrator are set out in an Appendix to Petitioners' main brief.

### SUMMARY OF ARGUMENT

#### I

Petitioners' contention that the Secretary abused his discretion in convening this Committee is not supported by either the legislative history or the economic data upon which they rely. When Congress amended the Act in 1958 to change the mandatory review period from one year to two years, it nevertheless provided that "the Secretary, in his discretion, may order an additional review during any such biennial period" (Section 8(a)). The legislative reports cited by petitioners provide absolutely no indication that any unusual limitations were intended to accompany this grant of discretionary authority.

Even if the Secretary's exercise of discretion were open to review, it is clear that the Secretary had ample basis for ordering this industry committee proceeding. At the time he took this action the latest available data showed that there had been startling increases in shipments of sweaters from Puerto Rico during April and May of 1965 over the same months of the preceding year. While the

quantity figures for such shipments were subsequently revised downward prior to the public hearing, such revisions provided no reason for revoking the hearing order, particularly since the figures for value and weight of shipments continued to show very considerable improvement over the preceding year, including a more than 90% increase in the value of shipments during the first eight months of the year. In addition, employment levels in this industry were significantly higher in November 1964, February 1965, May 1965 and August 1965 than in the same months of the preceding year. Under these circumstances the Secretary was more than justified in concluding that developments in this industry since the previous hearing were sufficiently unusual to warrant further investigation by an industry committee.

## II

Since Section 5(b) of the Act provides that committee membership shall include "persons representing employees in the industry, and a like number representing employers in the industry" it obviously contemplates that except for the public members, these committees will in large part be composed of persons who are affiliated with organizations which are active proponents of a particular point of view regarding increases in the minimum wage rate. Accordingly, there is no basis for petitioners' contention that this Committee was improperly constituted because certain members belonged to organizations which had gone on record in favor of a \$1.25 minimum rate; indeed, such contention overlooks the fact that two of the employer members—whom petitioners have described a "uniquely qualified" (pet. br. p. 38)—headed companies which were parties to the present proceeding in active opposition to any increase in the minimum wage rate.

Equally without basis in the statute is the argument that it was improper to appoint as an employer member a mainland manufacturer who might be expected to favor a higher minimum rate. Since Section 5(b) provides

that in making appointments to a committee the Secretary "shall give due regard to the geographical regions in which the industry is carried on," it plainly requires that in an industry conducted both on the mainland and in Puerto Rico—particularly where, as here, it is primarily on the mainland—representation be given to the point of view of mainland manufacturers who may be in competition with low-wage producers in Puerto Rico. The matter was clearly settled in *Opp Cotton Mills v. Administrator*, 312 U.S. 126 where, in rejecting a contention similar to that advanced by the present petitioners, the Supreme Court held that the statute calls for the exercise of discretion by the Administrator in selecting, with the purposes of the Act in mind, a committee on which the geographically distributed interests of the industry shall be fairly represented" (312 U.S. at 150-151).

Moreover, the nature of committee composition has not been unfair to petitioners; the previous committee, which recommended no increase in the minimum rate, was very similarly composed, and it was only a shift in the lineup of the public members which led to the different outcome of the present proceeding.

### III

The Committee properly voted to exclude as parties certain of the petitioners whose prehearing statements contained obvious abridgments in violation of the applicable regulation (29 C.F.R. 511.13). The fact that in recommending such exclusion, Committee counsel referred to an unpublished letter of the Administrator did not render such exclusion invalid, particularly since the letter contained nothing more than an obvious explanation of the regulation and the same explanation of the regulation had been given to petitioners' counsel when the Committee's counsel advised him of deficiencies in certain of the submitted statements. Although petitioners' counsel was given an opportunity in advance of the hearing to correct such deficiencies, he expressly declined to do so. More-

over, no substantial rights were affected by the Committee's action since each petitioner excluded as a party was invited to participate as a witness and their prehearing statements were received in evidence. As the case for all the petitioners was presented collectively by the same attorney, who testified, cross-examined, and rebutted on behalf of all, the fact that those classified as witnesses would not themselves have had all the rights of a party became entirely immaterial.

#### IV

After completion of the public hearing an industry committee is charged by statute and regulation (29 C.F.R. 511.16) with promptly resolving the issues before it and preparing a report containing its findings of fact and recommendations. Both the statute (Section 5(c)) and the regulations (29 C.F.R. 511.9) provide that two-thirds of the members of a committee shall constitute a quorum and that approval by a majority of all the members of the committee is required for its report.

Pursuant to these requirements this Committee convened in executive session after the termination of the public hearing on November 10 to begin its deliberations. After a number of votes were taken, a motion to recommend a minimum rate of \$1.20 was approved, 5-4. The Committee then adjourned "to meet again at 10:30 a.m. on Friday, November 12th, to discuss and consider approval of the Report, Findings of Fact and Recommendations" (J.A. 16). All members were present and had notice of this adjournment.

The \$1.20 rate voted on at the foregoing meeting was in no sense final, for it was still necessary for that rate to be incorporated into a report, together with findings of fact, and for that report to be approved by a majority of the Committee. Accordingly, it was entirely proper for the Committee to reconsider that vote at the November 12 meeting—the express purpose of which was to consider the report, including both findings and recom-

mendations—and to vote instead to recommend a rate of \$1.22. The fact that two employer members, both of whom had notice of this meeting, did not choose to attend in no way precluded such action, which was taken by a majority of the full Committee with a statutory quorum present.

## V

Petitioners, pointing to isolated portions of the evidence, and drawing inferences therefrom which the Committee was free to reject, contend that no substantial evidence supports the Committee's finding that the recommended increase of five cents an hour in the minimum wage rate will not substantially curtail employment in this industry. Viewed in the context of the record as a whole, however, and in the light of the Committee's statutory function, the Committee's finding clearly is supported by substantial evidence and is therefore conclusive on this appeal under Section 10(a) of the Act.

The basic factor supporting the Committee's finding is the unmistakable evidence that a substantial competitive advantage did exist for Puerto Rican manufacturers in this industry—virtually all of whose output is shipped to the mainland. It was established that there is a differential of at least 47 cents an hour in the wages of Puerto Rican and mainland labor, and since it was agreed by the industry and union witnesses that this Puerto Rican industry and its labor are as productive as on the mainland, it is clear that the wage differential truly reflects a difference in wage costs per unit of output. No showing was made of higher costs of doing business in Puerto Rico which would require the continuation of a differential of such size and the competitive advantage resulting therefrom.

Other factors established by the record which support the Committee's finding include: (1) the first eight months of 1965 showed an unprecedented increase in the value of sweater shipments from Puerto Rico of more than 90 percent over the same period of the previous

year; (2) there is no evidence that increases in minimum wages in Puerto Rico have at any time caused curtailment in employment, nor is there evidence that the \$1.22 rate will cause curtailment of employment; (3) during the past four years, although there have been fluctuations in profits and losses from year to year, the Puerto Rican industry has operated on a profitable level over the period as a whole, and the evidence shows that factors other than changed rates, including general business conditions, are responsible for the fluctuations; (4) the direct increase in the total wage bill resulting from the establishment of the \$1.22 wage rate amounts to approximately 2.8% and less than 1% increase in total costs—a modest increase which can readily be absorbed.

**I. The Action of the Secretary of Labor in Ordering a Wage Review for the Sweater and Knit Swimwear Industry During a Biennial Period was a Proper Exercise of His Discretion Under Section 8(a) of the Act**

Petitioners initially attack the Industry Committee's determination that economic conditions justified a five cent increase in the minimum wage rate in this industry by contending that the Secretary's convening of this Committee was an abuse of his discretion. This contention is based on exaggerated assertions as to the limitations upon the Secretary's exercise of discretion and a distorted view of the factors which could have prompted the Secretary to conclude that industry committee review of the existing wage rate was warranted during 1965.

When Congress amended the Act in 1958 to change the mandatory review period from one year to two years, it was acting upon the conclusion—shared by all interested elements—that mandatory annual reviews were unnecessarily burdensome since "economic changes occurring from one year to the next, in general, do not provide a sufficient justification for an alteration in wage rates" (Senate Report No. 2313, 85th Cong., 2nd Sess., pp. 1-2). In amending Section 8(a) to provide for biennial reviews,

however, Congress expressly provided that "the Secretary, in his discretion, may order an additional review during any such biennial period." While Congress undoubtedly anticipated that the exercise of such discretion would be found necessary only in "rare situations" (see House Report No. 2235, 85th Cong., 2nd Sess. p. 2), neither the statutory language adopted, nor the legislative history, suggest that the grant of discretionary authority to the Secretary carried with it any unusual limitations. The Senate Report on the amendment, which petitioners quote only in part (pet. br. p. 10), goes on to state quite simply (at p. 2) that "The bill also provides that the Secretary in his discretion may order an additional review during any such 2-year period." The House Report on the amendment (at p. 2) similarly states that the bill "also authorizes the Secretary of Labor to order an additional review during the biennial period, if conditions warrant it."<sup>4</sup>

We submit therefore that there is no basis for petitioners' contention that wage orders resulting from such additional reviews are subject to attack unless it can be established that the Secretary, in ordering such review, acted on the basis of what petitioners repeatedly refer to as "extraordinary circumstances." Since the matter of convening the Committee was clearly committed to the Secretary's discretion, and since only the Committee's action—not the Secretary's—affected petitioners' substantive rights, we submit that the Secretary's reasons for ordering this hearing are not subject to review. Section 10, Administrative Procedure Act (5 U.S.C. 1009);

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<sup>4</sup> Congressman Roosevelt, manager of the bill in the House, also stated at the time of its passage that it "provides for biennial review but also authorizes the Secretary of Labor to order additional reviews during the biennial period if conditions warrant" (104 Cong. Rec. 15459). And that part of the letter of Under Secretary of Labor O'Connell to the Chairman of the Senate Committee which petitioners' quotation (pet. br. p. 10) omits, similarly points out that "The change in the requirements from annual to biennial review would not preclude annual review in those situations where the Secretary finds that such review is necessary to carry out the purposes of the Act" (see Sen. Report 2313, pp. 2-3).

*Panama Canal Co. v. Grace Line*, 356 U.S. 309, 317; *Schilling v. Rogers*, 363 U.S. 666; *Retail Store Employees Union Local 954 v. Rothman*, 112 U.S. App. D.C. 2, 298 F.2d 330.

Moreover, it is in any event clear that there was ample basis for the Secretary to conclude that changes in economic conditions in this particular industry warranted this further review, and the soundness of this conclusion was confirmed by the Committee's own subsequent action. While the relevant data will be discussed in greater detail *infra*, pp. 32-44, in reply to petitioners' argument that the Committee's determination is not supported by the evidence, a limited discussion here of some of the data available to the Secretary will readily refute their contention that the Secretary acted on the basis of "grossly inaccurate and fragmentary economic data" (pet. br. p. 11).

The most current indicators of changes in economic conditions in Puerto Rican industry are the data on volume of shipments—expressed in quantities, dollar volume and weight—compiled by the Bureau of Customs and published monthly by the Bureau of Customs and the Bureau of the Census. At the time the Secretary ordered this hearing such figures were available for the first five months of 1965. They showed, as petitioners recognize, a startling increase in quantity of sweaters shipped in April and May of that year over the same months of the preceding year—from 66,000 dozen for those two months in 1964 to 159,000 dozen for the same period in 1965 (pet. br. pp. 11-12; J.A. 165). Petitioners apparently do not question that such an increase would justify the Secretary's action, but contend that he should have revoked his order when shortly before the actual convening of the Committee on November 8, 1965, the quantity figures were revised downward by the Customs Bureau to show a total of only 63,000 for April-May of 1965 (J.A. 206-209).

What petitioners completely neglect to mention is that while the quantity figures were subsequently revised downward considerably, accompanying adjustments in the

value and weight figures left those figures still showing very substantial increases over the prior year. Thus, even after adjustment by the Customs Bureau prior to the actual convening of the Committee, it was shown that the value of sweater shipments from Puerto Rico to the mainland rose from \$842,000 in April 1964 to \$1,808,000 in April 1965; and from \$1,847,000 in May 1964 to \$2,592,000 in May 1965 (J.A. 206). Moreover, after the Secretary ordered the review but prior to the public hearing, figures through August 1965 became available, showing that during the first eight months of 1965 the value of sweater shipments nearly doubled over the same period in the preceding year—from \$9,173,037 to \$17,608,471 (J.A. 177, 113, 114), and that the weight of such shipments increased from 1,419,455 lbs. to 2,033,589 lbs. (J.A. 223).<sup>5</sup>

Thus the data available to the Secretary, both at the time he ordered this proceeding and at the time the Committee convened, fully demonstrates that the industry's output was expanding impressively. Moreover, employment had been on the rise since 1963, with the figures for November 1964, February 1965 (both available to the Secretary when he ordered this review), May 1965 and August 1965 (both becoming available between the time of the order and the hearing) all showing significant increases over the same months in the preceding year (J.A. 212).<sup>6</sup> Under these circumstances, and in view of the

<sup>5</sup> The Secretary would, of course, be entirely justified in concluding that the value and weight figures were the more reliable indicators of the flourishing conditions in this industry. As pointed out during the hearing, all of these data are derived from export declarations which shippers are required to fill out. Value and weight figures given are likely to be fairly accurate because those figures are relevant for either insurance or freight rate purposes; quantity figures, on the other hand, are often not carefully recorded and in many instances are actually filled in by a forwarding company which may only be guessing as to the quantity in the package. (See J.A. 133-134).

<sup>6</sup> While petitioners claim that prior to the convening of the Committee the Secretary "knew that the employment data were in-

statutory policy to raise Puerto Rican minimum wage rates to the mainland level "as rapidly as is economically feasible without substantially curtailing employment" (Section 8(a)), the Secretary was more than justified in concluding that developments in this industry—which was one of only three for which no increase was ordered in 1964 out of the 31 reviewed in that year—were sufficiently unusual to warrant further investigation by an industry committee.<sup>7</sup>

## II. The Composition of the Committee, Which was Appointed with Due Regard to the Geographical Regions in Which the Industry is Carried on, Complied with the Requirements of the Act

In arguing that the appointment of Alper as an employer member, and DeLeo, Sanchez and Schwartz as employee members, violated Sections 5(b) and 8(b) of the Act, petitioners first suggest that because those members were affiliated with organizations which had gone on record before the previous industry committee—No. 68-C—in favor of a \$1.25 minimum wage rate,<sup>8</sup> these

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accurate" (pet. br. p. 13), the fact is that the revisions did not diminish the favorable employment picture presented by the original figures. The revised figures show that employment as of May 15, 1965 was still 365 ahead of May 15, 1964, and that employment as of August 15, 1965—originally thought to be 17 less than August 15, 1964—was actually 173 greater (compare J.A. 212 with J.A. 170).

<sup>7</sup> Even if the revisions appearing prior to the hearing had not so clearly confirmed that unusual developments were taking place in this industry, it would in any event have been appropriate for the Secretary, having properly ordered the hearing, to leave to the industry committee the assessment of the significance and accuracy of these revisions as well as other data which became available between the time of his order and the commencement of the hearing.

<sup>8</sup> Alper is president of the United Knitwear Manufacturers League, a trade association composed of mainland companies competing with Puerto Rican manufacturers. Prior to the 1964 hearing that association, in a letter signed by Alper, urged Committee No. 68-C to recommend a rate of \$1.25. The Association made the same recommendation to the present Committee in 1965, in a letter sent

members could not now be expected to reach a decision based on facts elicited by investigation and public hearing (pet. br. pp. 17-19). In making this contention petitioners fail to mention that employer members Titelman and Atkind both head companies which in the instant proceeding, as well as in the previous one, actively opposed, through their attorneys, any increase in the minimum wage rate;<sup>9</sup> however, since petitioners have elsewhere described these two members as "uniquely qualified to participate in the Committee's wage determination" (pet. br. p. 38), they presumably believe that affiliation with an organization which makes known its point of view is a disqualification only when that point of view favors higher wages.

The fact is, of course, that Section 5(b) of the Act, by providing that committee membership shall include "persons representing employees in the industry, and a like number representing employers in the industry," obviously contemplates that, except for the public members, these committees will in large part be composed of persons who are associated with organizations which go on record before each industry committee proceeding regarding the wage rate they believe appropriate. All such members, however, take an oath, required of all Government employees, to "well and faithfully discharge the duties of the office," and while their background may color their understanding of the facts, they are not free to ignore the directives of the statute in the decision-making process. Such members are not bound by the positions their organizations have recommended, and are regularly found voting in favor of some other rate. In

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after the Committee was appointed and signed by another official (J.A. 172-173). Employee members Schwartz, DeLeo and Sanchez are officials of New York, Philadelphia and Puerto Rican affiliates of the ILGWU, whose national office recommended to both Committees the adoption of a \$1.25 rate.

<sup>9</sup> Titelman is president of Puritana Manufacturing Corp., and Atkind is president of Rosita Mills, Inc. (J.A. 151)—both of which are petitioners in the present appeal.

terestingly enough, the only members of this Committee who refused to depart from the pre-announced position of their organizations were Titelman and Atkind, who repeatedly voted against any increase in the \$1.17 wage rate; each of the other four, though belonging to organizations which had urged a \$1.25 rate, voted for \$1.22 and three of them at one point voted for \$1.20 (J.A. 15, 16, 20).

Petitioners further contend that the appointment as an employer member of Alper—a mainland manufacturer who, like the union representatives, would be expected to favor a higher wage rate—was improper since “opposing economic interests” were not evenly balanced (pet. br. pp. 20-23). This argument overlooks the fact that the statute says nothing about balancing opposing economic interests; rather it provides that the Secretary shall appoint an equal number of “persons representing employees in the industry” and “persons representing employers in the industry” (Section 5(b)). And it goes on to provide that in making such appointments the Secretary “shall give due regard to the geographical regions in which the industry is carried on” (*ibid.*). Thus, in an industry conducted both on the mainland and in Puerto Rico, the statute requires the representation of the viewpoint of mainland manufacturers; and, in view of the statutory purposes, it is entirely appropriate that such representation should include manufacturers who are directly affected by competition from the low-wage plants in Puerto Rico, and whose views do not necessarily coincide with the views of persons operating in Puerto Rico.

This point was made perfectly clear by the Supreme Court in *Opp Cotton Mills v. Administrator*, 312 U.S. 126—the first case to arise under Section 5 of the Act, which at that time applied to industry committee proceedings on the mainland. In that case southern manufacturers contended that their interests in retaining low wages were insufficiently represented because less than a majority of the industry committee members were drawn from the South, even though most of the industry’s pro-

duction and employment was in that region. In rejecting this contention, the Supreme Court held that the statute did not require a mathematical apportionment of the committee, but that the Administrator's statutory obligation to give "due regard" to geographical considerations "calls for the exercise of discretion by the Administrator in selecting, with the purposes of the Act in mind, a committee on which the geographically distributed interests of the industry shall be fairly represented" (312 U.S. at 150-151). The Court went on to state, in language which directly refutes the contention made by petitioners in the instant case:

As the record shows that the lowest wage scale prevailed in the southern mills, the Administrator could have concluded that a selection of a committee, a majority of whose members represented a low wage locality would tend to defeat the purposes of the Act. The Act was also intended to protect the interests of employers and employees of mills in other localities which compete with the low wage scale mills [312 U.S. at 151].

The Supreme Court ruling demonstrates *a fortiori* that there is no valid basis for petitioners' complaint about the composition of the Committee—which, it may be noted, was not made to the Secretary when the appointments were announced, but withheld until the Committee convened.<sup>10</sup> Unlike the situation presented in the *Opp* case, where the low wage area comprised the larger part of the industry, by far the greater part of the knitted

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<sup>10</sup> Even if there were any validity to petitioners' criticisms of the Committee's composition, the fact that they were not presented to the Secretary while there was still an opportunity for correction, but only to the Committee which does not have power to take appropriate action, would be sufficient reason for rejecting their contention now. See *United States v. Tucker Truck Lines*, 344 U.S. 33, 36-37; *Bethlehem Steel Co. v. National Labor R. Board*, 74 U.S. App. D.C. 52, 63-64, 120 F.2d 641, 652 (C.A. D.C.); *North American Airlines v. Civil Aeronautics Board*, 100 U.S. App. D.C. 5, 12, 240 F.2d 867, 874 (C.A. D.C.), certiorari denied 353 U.S. 941.

outerwear industry is on the mainland where the average wage rate was more than 50 cents higher than in Puerto Rico as of February 1965 (J.A. 155-156).<sup>11</sup> While this would have justified the Secretary in appointing two employer members from the mainland, the Secretary appointed only one, thereby giving greater weight to the Puerto Rican interests represented by Titelman and Atkind.<sup>12</sup>

That the nature of committee composition has not resulted in unfairness to petitioners may be demonstrated by the fact that the Committee which met in 1964 for this industry—No. 68-C—was very similarly composed, and that Committee recommended no increase in the minimum wage rate.<sup>13</sup> For the present Committee the Sec-

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<sup>11</sup> While the industry in Puerto Rico employs less than 2500 workers, the mainland industry employed 60,000 production workers in 1963. One-third of those were employed in New York—the area from which employer member Alper, employee member DeLeo, and public member Yagoda were drawn. Close to 20% of the mainland employment is in Pennsylvania—which is where employee member Schwartz and public member Horlacher were selected from. Employer members Titelman and Atkind, employee member Sanchez, and public member Villaronga are from Puerto Rico. (J.A. 151, 152, 166).

<sup>12</sup> While petitioners also suggest, without actually arguing the point, that it was improper to appoint three union officials as employee representatives when most employees in the industry are not unionized in Puerto Rico (pet. br. pp. 22-23), the fact is that a large portion of the mainland industry is unionized (J.A. 157). A similar contention was made in the *Opp* case where it was urged that the appointment of only union officials to represent employees "left wholly unrepresented the vast multitude of unorganized southern workers" (p. 16, brief for petitioner and intervenors, U.S. Supreme Court, October Term 1940, No. 330). The Supreme Court, in holding that "the composition of the committee satisfies the requirement of the Act" (312 U.S. at 150), plainly rejected that argument. Furthermore, it is apparent that very few persons would be available to effectively represent the interests of unorganized workers, other than union officials.

<sup>13</sup> Committee 68-C also had an employer member from the mainland (Max Forman) who was an official of a trade association (Knitted Outerwear Manufacturers Assn.) which, like Alper's association, had sent a letter urging that a \$1.25 rate be adopted.

retary appointed the same two employer members, as well as one of the public members (Villaronga), who had previously voted against any increase. It was the shift in the lineup of the public members which led to the different outcome of the present proceeding, since both Villaronga and a new public member, Yagoda, voted for a three cent increase, and Yagoda voted for the five cent increase which was finally adopted.<sup>14</sup>

In view of the foregoing, we submit, it is clear that the Secretary exercised a proper discretion in appointing this Committee according to the statutory requirements, including the requirement that "due regard" be given to the geographical regions in which the industry is carried on.

### **III. The Committee Properly Excluded Five Petitioners as Parties to the Proceedings Because of Deficiencies in Their Financial Statements; in Any Event, Since Such Petitioners Were Invited to Participate as Witnesses They Were Not Prejudiced by the Committee's Action**

The regulations governing industry committee proceedings include the provision that "[t]estimony on behalf of an employer or group of employers \* \* \* as to inability to adjust to a higher minimum wage rate" shall be supported "by tangible objective data filed as part of the prehearing statement," including "pertinent unabridged profit and loss statements and balance sheets for a representative period of years for the individual firm or firms involved" (29 CFR 511.13). In executive session immediately prior to the public hearing, Committee counsel recommended that four of the petitioners had not qualified as parties since their prehearing statements, being abridged, did not satisfy the foregoing regulation. Because in making this recommendation he referred to an unpublished letter written by the Administrator, petitioners claim that the Committee's vote to exclude as parties

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<sup>14</sup> Villaronga left the proceedings because of illness before the vote for the five cent increase was taken (J.A. 17).

five of the petitioners<sup>15</sup> was contrary to the requirements of the Administrative Procedure Act and the Federal Register Act, and that its recommended wage rate must therefore be set aside. Contrary to their contentions, we submit, the Committee's action was not violative of the foregoing statutes, particularly since the prehearing statements cited by counsel reflect obvious deficiencies under the regulation and such deficiencies had been specifically called to the attention of petitioners' counsel. Moreover, since these petitioners were nevertheless admitted as witnesses, the exclusion was a purely formal matter which resulted in no prejudice whatever, and therefore provides no basis for setting aside the wage order.

The letter in question (J.A. 225-226) was written by the Administrator on August 24, 1964 in reply to an inquiry from Dr. Teper of the ILGWU regarding the above regulation. The Administrator stated that the term "pertinent" meant that the financial statements must be those of the particular firms claimed in the testimony to be unable to adjust to a higher rate, and that "unabridged" means that the statements must be submitted "in the complete form in which such documents are prepared by the firm's accountants without any deletions therefrom or other abridgment." The letter went on to point out that "schedules, comments, notes and certifications which the accountants made a part of the profit and loss statement or balance sheet as prepared by them may not, of course, be omitted, for this would constitute an abridgment."

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<sup>15</sup> Committee counsel recommended that because of abridgements in their financial statements Finetex, Inc., Gurabo Knitting Mills, Inc., Sigo Corporation, and Textile Dye Works, Inc., did not qualify as parties but could be invited to appear as witnesses. Contrary to the statement in petitioners' brief, the fifth firm excluded—Yauco Super Knits, Ltd.—was recommended by counsel as qualifying as a party, subject to correction of certain deficiencies, but the Committee, on a motion seconded by employer member Atkind, voted to invite this company as a witness (J.A. 8-10).

Not only does it appear that this letter—which simply gives an obvious explanation to the terms of the regulation<sup>16</sup>—was brought to the attention of the same counsel who represented this industry in the proceedings before Industry Committee No. 68-C in November 1964,<sup>17</sup> but such counsel was expressly advised shortly before the present proceedings began that their financial data were expected to be complete in the respects stated above. Thus, immediately upon receiving petitioners' prehearing submission, Committee counsel Blum, on November 2, 1965, wrote to Mr. Kelberg, counsel for petitioners, advising that "in instances where financial statements make

<sup>16</sup> While it appears to be petitioners' position that the term "pertinent" conveys a different meaning—requiring only the submission of such portions of their financial statements as may be considered relevant to industry committee proceedings (see pet. br. pp. 25-26), this is an improbable construction since neither the word "portions" nor any word with similar meaning is used in the regulation. The point is, of course, that any determination by an interested party as to what portions of a complete financial report are to be submitted can only be subjective, and the resulting modification of that report from the form in which it was prepared by the accountant tends to deprive it of the "objective" quality required by the regulation.

<sup>17</sup> During the present hearing Dr. Teper pointed out to Mr. Cooper that the Administrator's letter had been cited during the 1964 hearing, and Mr. Cooper's response contains no denial of this assertion (J.A. 58). That it was so cited is evident from the journal which is part of the official record of Industry Committee No. 68-C which contains the following entry for its executive session of November 23, 1964:

The Chairman announced that the executive session was for the purpose of deciding on objections raised by Dr. Teper to the admission of certain firms in Mr. Cooper's prehearing statement as parties. Attorney Bosch explained that these objections were based on a decision of the Wage and Hour and Public Contracts Administrator submitted to Dr. Teper at his request, outlining what constituted qualifying financial data. He read the letter of the Administrator to Dr. Teper and the Committee discussed the objections at great length.

On the basis of the objections advanced, Industry Committee 68-C voted to exclude two of the firms—Glamourette Fashion Mills, Inc. and Puritana Mills, Inc.—as parties, but to admit them as witnesses.

a reference to a note, schedule or an exhibit, that note, schedule or exhibit is considered an integral part of the financial statement and should be submitted along with the financial statement in order to meet the requirements of the regulations governing industry committee procedures" (J.A. 214-215). The letter went on to detail how a number of the statements submitted were deficient in these respects.

On November 4, 1965, Mr. Kelberg forwarded some of the materials requested, but indicated that the other deficiencies cited would not be corrected since previous committees had not required any more than had already been submitted (J.A. 203-204). His letter contained no suggestion of any inability to supply such data had he been willing to do so. Petitioners' unwillingness to submit the additional data was again made evident when the Committee convened, for even after the vote to exclude was announced, along with the reasons therefor, petitioners still made no offer to supply the missing data.

Under these circumstances, we submit, the Committee's action was entirely appropriate. It is obvious, even without resort to the Administrator's letter, that material was deleted from the financial statements of the excluded firms and that they were thus "abridged" in any sense of the term;<sup>18</sup> moreover, even if this were not so clear, the matter had been brought to the attention of petitioners' counsel both before the hearing convened and at the time it convened, and in neither instance was there any offer to provide the deleted information.

Petitioners argue that the Administrator's letter, not being published, was not a valid "document" under Sec-

<sup>18</sup> The prehearing submissions of Finetex, Gurabo, Sigo, Yauco, and Textile Dye Works, Inc. do not include the schedules referred to on pages X200, X204, X210, X218, X221, X305, X324 and X351 of Exhibit 13. In addition, the accountant's pagination of Textile Dye Works' 1963 financial statement indicates that three pages were excluded from the presentation (J.A. 63). (By agreement of the parties, and with the approval of the Court, Exhibit 13 has been lodged with the Clerk, but has not been printed; see note 3, p. 3, petitioners' main brief).

tion 307 of the Federal Register Act and therefore should not have been referred to. This contention mistakenly assumes that there was an attempt to give that letter itself some force and effect of its own. On the contrary, it simply reflected an existing administrative interpretation, the validity of which did not depend upon its publication in the Federal Register. See *Boesche v. Udall*, 112 U.S. App. D.C. 344, 346, 303 F.2d 204, 206 (C.A. D.C.), affirmed 373 U.S. 472.<sup>19</sup>

In any event, petitioners are entirely unable to claim that substantial rights were at all affected by the committee's ruling. Each of the petitioners affected was invited to appear as a witness and its prehearing statement was received and considered by the Committee (J.A. 62). The only difference between the status of a "party" and that of a "witness" is that a party has the right to cross-examine witnesses and submit rebuttal evidence (29 C.F.R. 511.13). Since the case for all petitioners was presented collectively by Mr. Cooper, who testified, cross-examined, and rebutted on behalf of all, the fact that some were classified as "witnesses" was entirely immaterial—and petitioners do not seriously claim otherwise.<sup>20</sup>

In an effort to seek out some basis for claiming that they were prejudiced, petitioners make the far-fetched assertion that the Committee's action cast doubt on the credibility of all of the financial statements. Their only

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<sup>19</sup> The situation is wholly unlike that in *Hotch v. United States*, 212 F.2d 280 (C.A. 9), upon which petitioners rely. That case involved a regulation making certain acts criminal; not having been published, the court held the regulation was not validly issued and could not have the force of law.

<sup>20</sup> That the Committee's action was but a formality without substantive effect is evidenced by the fact that counsel for petitioners, while objecting to the action, specifically advised the Committee that he was not seeking a reconsideration of the rulings unless the Committee should on its own motion see fit to do so (J.A. 55), and the further fact that in only one instance did one of the two employer members from Puerto Rico dissent from the vote to exclude, and in several instances one of them either made the motion or seconded it (J.A. 9-10).

explanation for this conclusion is that the witness for the ILGWU drew "an inference of withholding vital information" from the Committee (pet. br. p. 29).

It is true that Dr. Teper—who was seeking to have other firms excluded as parties as well—did argue to the Committee that the deletion of schedules and notes prepared by the accountant deprives a financial statement of its objective character since it represents the party's own decision of what it will show the Committee and the other parties, and he expressed his view that a number of committees in the past had been overly lenient about such deletions (J.A. 63-64). However, if petitioners believed this to be an unfair criticism of some of their financial statements they could certainly have rebutted Dr. Teper's remarks. Having made no attempt to do so, they are hardly in a position to claim now that they were prejudiced thereby, and certainly in no position to make the illogical contention that the Committee's exclusionary vote prejudiced them because of Dr. Teper's remarks.

Since the Committee's ruling thus had "no substantial bearing on the ultimate rights of the parties" any error in its action would not warrant setting aside the wage order which resulted from its proceedings. *Market Street R. Co. v. Commission*, 324 U.S. 548, 562; *U.S. v. Pierce Auto Lines*, 327 U.S. 515, 530; *Brown Telecasters, Inc. v. F.C.C.*, 110 U.S. App. D.C., 127, 128, 289 F.2d 868, 869, certiorari denied 368 U.S. 916; *Triangle Publications, Inc. v. F.C.C.*, 110 U.S. App. D.C. 214, 217, 291 F.2d 342, 345; *Red Star Manufacturing Co. v. Grimes*, 95 U.S. App. D.C. 244, 221 F.2d 524, 530.

#### **IV. The Committee's Report Recommending a \$1.22 Minimum Wage Rate Was Properly Considered and Approved by a Majority of the Full Committee at a Meeting of Which All Members Had Notice and at Which a Statutory Quorum Was Present**

The final act of an industry committee under the statute is to "file with the Administrator a report containing its findings of fact and recommendations with respect to

the matters referred to it" (Section 8(d)). To accomplish this business the applicable regulations provide that as soon as the receipt of evidence is concluded the committee shall receive any proposed findings of fact and recommendations submitted by any party (29 C.F.R. 511.15), and that "[p]romptly, after receipt of these submissions, the committee will resolve the issues before it and prepare a report containing its findings of fact and recommendations" (29 C.F.R. 511.16). Both the statute (Section 5(c)) and the regulations (29 C.F.R. 511.9) provide that two-thirds of the members of a committee shall constitute a quorum and that approval by a majority of all of the members of the committee is required for its report.

Pursuant to the above requirements Committee No. 75 recessed at the conclusion of the public hearing on November 10, 1965 and reconvened at 3:30 p.m. in executive session to begin its deliberations (J.A. 15). In the course of the executive session several minimum wage rates were proposed by motion. A motion to recommend an increase in the rate to \$1.25 was lost, as was a motion to retain the existing minimum of \$1.17 (J.A. 15). A motion to recommend a minimum of \$1.20 was made three times by public member Yagoda before it was carried by a vote of 5 to 4, with employer members Titelman and Atkind, public member Horlacher and employee member DeLeo against (J.A. 15-16). At 7:05 p.m., the Committee's Journal states, "the Committee decided to meet again at 10:30 a.m. on Friday, November 12th, to discuss and consider approval of the Report, Findings of Fact and Recommendations" (J.A. 16). All Committee members were present and had notice of this adjournment.<sup>21</sup>

<sup>21</sup> Adjournments are specifically provided for by the regulations which state: "A committee may adjourn its meeting or hearing, or both, from time to time, and meet again, at hearing or otherwise, pursuant to the terms of adjournment, or on call of its chairman or the Administrator" (29 C.F.R. 511.12(b)).

Pursuant to the terms of its adjournment this Committee convened again on November 12, waiting for absent members until 12:40 p.m., at which time it proceeded with employer members Titelman and Atkind still absent (J.A. 17).<sup>22</sup> A draft of a proposed report was available to the members, and the chairman invited "any suggestions anyone has as to the contents of the report" (J.A. 21). The proposed report consisted of two sections, one entitled "Findings of Fact" and the other entitled "Recommendations."<sup>23</sup> After several changes in figures pertaining to employment levels and existing average wage levels were agreed upon, public member Yagoda moved for a change in the recommendation "so that in every place where it appears that the minimum wage rate of \$1.20 an hour is recommended, there be substituted the figure of \$1.22 an hour" (J.A. 23). Mr. Yagoda, who had previously made the motion which led to the vote on the recommendation for the \$1.20 rate, explained that "I have since had the benefit of a more careful exploration of the material and some of the influential and significant characteristics of the material \* \* \* which has led me to conclude that my position is one favoring \$1.22 an hour, rather than \$1.20 an hour" (J.A. 23). Under these circumstances, he stated, "I would be less than honest with myself and with the mandate which is conferred on me as a member of this committee if I did not make the change to the figure which is one that I now support with conviction" (J.A. 24).

The chairman, stating that he did not wish to assume the sole responsibility for determining that it was procedurally proper to reconsider at this meeting the vote previously taken, ruled the motion out of order, but pointed out that his ruling could be overturned if a majority

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<sup>22</sup> Shortly after the meeting began public member Villaronga left because of illness (J.A. 17).

<sup>23</sup> As noted above, Section 8(d) requires a committee to conclude its business by filing with the Administrator a report containing both findings of fact and recommendations.

was of the opinion that it was erroneous.<sup>24</sup> Employee member Schwartz challenged the ruling of the chair, at which point the Committee asked for advice from Committee Counsel Blum and from the Department's Regional Attorney Marks. They were informed of unsuccessful attempts which had been made to bring Titelman and Atkind to the meeting,<sup>25</sup> and were advised that while the Department would prefer that the proposed action be taken with all members present, the Committee was nevertheless authorized to operate through a quorum and subject to the approval of a majority of its members (J.A. 31, 34-37). Noting that it was now after 3 p.m. and that "an opportunity had been afforded for such outside contacts that seem indicated under the circumstances," the Chairman put Schwartz's challenge to a vote and it was carried by five votes (J.A. 38-40). Yagoda's motion to include in the Report a recommendation for a \$1.22 minimum rate was then voted upon and carried 5-1, following which the Committee voted 6-0 to adopt the Report as modified, the Chairman dissenting only as to the recommended rate (J.A. 20).

Contrary to the doubts expressed by the chairman, and to the argument made by petitioners, it is a well recognized general rule that "All deliberative or legislative bodies, during their session, have the power to do and

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<sup>24</sup> The applicable regulations provide that decisions of the chairman "shall be subject to approval of a majority of the members present if any member objects" (29 C.F.R. 511.9).

<sup>25</sup> Blum stated that Atkind, who had advised at the close of the preceding session that he would be in sometime on November 12, was contacted at his plant in the greater San Juan area and was told of the proposal to increase the recommended rate, but that Atkind failed to indicate whether he would attend or not (J.A. 33, 37). Blum also reported contacting Titelman, who had returned to New York, and stated that the latter had advised that it would be impossible to return within the next two to three days, and further, "that he regarded his work on the Committee as finished" (J.A. 34). Marks further pointed out that he had heard Titelman ask Regional Director Myers at the close of the preceding meeting whether he should attend on November 12 and was told that "if he was not here he proceeded at his peril" (J.A. 34).

undo, consider and reconsider, as often as they think proper, and it is the final result only which is to be regarded as the thing done." *Neill v. Ward*, 103 Vt. 117, 153 Atl. 219, 224 (1931).<sup>26</sup> It is also well established that "An adjourned meeting of either a regular or special meeting is but a continuation of the meeting of which it is an adjournment, and any business which could have been transacted at the original meeting may be transacted at the adjourned meeting"—including reconsideration of matters voted upon at the original meeting. 62 CJS, *Municipal Corporations* § 394.<sup>27</sup> These basic principles applicable to deliberative bodies generally, are clearly pertinent here in the absence of any contrary provision in the statute or regulations, and establish the validity of the action taken by a statutory quorum of the Committee in a meeting of which all members had notice.

The arguments presented by petitioners in parts IV and V of their brief are based on the assumption that under the "terms of adjournment" the meeting on November 12 was not to be a continuation of the November 10 meeting, but was to be a "special meeting" held for the limited purpose of performing a "formality" with no

<sup>26</sup> Among the cases applying this principle are *Sagness v. Farmers Cooperative Creamery Co.*, 67 S.D. 379, 293 N.W. 365 (1940); *Delaware & Atlantic Tel. & Tel. Co. v. Beverly*, 86 N.J.L. 667, 94 Atl. 310 (1914); *Del Maso v. Board of County Commissioners of Prince George's County*, 182 Md. 200, 34 Atl. 2d 464 (1943); *Stiles v. City of Lambertsville*, 73 N.J.L. 90, 62 Atl. 288 (1905); *John Cassidy v. City of Bangor*, 62 Me. 434 (1870). See also 62 C.J.S. *Municipal Corporations* Sec. 407; *Robert's Rules of Order Revised*, Sec. 36 (1951).

<sup>27</sup> Cases stating this rule include *City of Picayune v. Mississippi Power Co.*, 197 F.2d 444 (C.A. 5); *Sagness v. Farmers Cooperative Creamery Co.*, 67 S.D. 379, 293 N.W. 365 (1940); *Seal of Gold Mining Co. v. Slater*, 161 Cal. 621, 120 P. 15 (1911); *Delaware & Atlantic Tel. & Tel. Co. v. Beverly*, 86 N.J.L. 667, 94 Atl. 310 (1914); *Scales v. Butler*, 323 S.W.2d 25 (Mo. App., 1959); *Town of Hodgenville v. Kentucky Utilities Co.*, 250 Ky. 195, 61 S.W.2d 1047 (1933). See also 4 McQuillen, *Municipal Corporations*, Sec. 13.39 (3rd ed.); 2 Fletcher, *Cyclopedia Corporations*, Sec. 401 (1954); II Dillon, *Municipal Corporations*, Sec. 535 (5th ed.)

business of substance to be transacted, and that the motion to reconsider represented a "changed purpose" which required special notice to the absent members (see pet. br. pp. 35-40).<sup>28</sup> Their assumption—and the apparent assumption of the Committee chairman—is directly contrary to the "terms of adjournment," which were that the Committee would "meet again at 10:30 a.m. on Friday, November 12th to discuss and consider approval of the Report, Findings of Fact and Recommendations" (J.A. 16). The purpose thus stated encompasses the entire scope of business which remained to be accomplished after the public hearing had ended, and which had merely been commenced but not completed at the November 10 meeting. Until that business was completed the vote for the \$1.20 rate was necessarily tentative for it could have no effect until that rate became incorporated in a report containing the Committee's findings of fact and until the report was approved by a majority of the Committee. Petitioners themselves recognized the tentativeness of this vote in their petition for review when, in addition to arguing that the \$1.22 rate was invalid, they also pointed out that the "action of the Committee in voting for a \$1.20 rate is invalid in that it was not a final action and therefore could have no force and effect" (Petition, p. 12).

While the members of the Committee, both those voting for and voting against the \$1.20 rate, may well have assumed that they would not be changing their minds with respect to that rate prior to voting on the final report, it is wholly unrealistic to assume that they had in any way foreclosed themselves from doing so. This is

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<sup>28</sup> The authorities cited by petitioners (br. p. 39) merely hold that action taken by a deliberative body at a meeting called for a special purpose is not valid unless all members have notice. Since all members in the present case did have notice that the November 12 meeting was to be held to consider the report, findings and recommendations, the cited cases are entirely consistent with what was done here. As the court pointed out in *Holcombe v. Trenton White City Co.*, 80 N.J. Eq. 122, 134, 82 Atl. 618, 624, a case relied on by petitioners: "If \* \* \* [the absent members] had notice and failed to attend, they waived their rights \* \* \*."

particularly so in view of the circumstance that they had yet to consider the findings of fact which would be made part of the report in support of the recommended rate. In the course of discussing and considering the data and other material which would be included, a member who had voted for the \$1.20 rate might well conclude on the basis of this further consideration of the evidence that this rate was either too high or too low. In such case it would be entirely appropriate—indeed a sworn obligation—to move for reconsideration.<sup>29</sup> The November 12 meeting also provided an opportunity for the dissenting members to perform a significant function if they had but had the interest to exercise it. Since the Committee would be discussing the data upon which the majority members were relying, the dissenting members would still have an opportunity to induce them to change their minds by pointing to evidence which might have been overlooked. The dissenting members might also have attempted to include in the findings such data as might tend to weaken the majority's recommendation should the resulting wage order be appealed or which might tend to support the dissenting opinion which Atkind and Titelman had announced an intention to file (J.A. 16).<sup>30</sup> Since, however, Atkind and Titelman, who had notice that the Committee would be meeting on November 12 to consider the entire report, including both findings and recommendations, made a deliberate choice to absent themselves—presumably on the assumption that their views would not have influence in the Committee's deliberations—a statutory quorum of the Committee was not prohibited from taking proper action, simply because the ab-

<sup>29</sup> That the Committee members themselves believed they were free to reconsider their previous vote, and did not understand that in agreeing to adjourn and reconvene for purposes of considering a proposed report containing both findings of fact and recommendations they were to be in any way limited to considering only a part of that report, is clear from their vote taken pursuant to 29 C.F.R. 511.9, to disapprove the chairman's contrary ruling.

<sup>30</sup> Such a dissenting opinion was never filed.

sent members may not have anticipated what that action would be.<sup>31</sup>

It should be added that even though not required under applicable principles of procedure, special efforts were nevertheless made to inform Atkind and Titelman that a reconsideration of the \$1.20 rate was being proposed. Atkind, who was contacted at his factory in the San Juan area, for unexplained reasons never came to the meeting nor asked that action be postponed. Titelman, who had been expressly cautioned by the Regional Director against missing the adjourned meeting, nevertheless departed for New York, and when contacted there on November 12 advised that he regarded his work on the Committee as finished. Under these circumstances, we submit, it cannot seriously be claimed that these members "were deprived of their right to take part" in the Committee's final session (see pet. br. p. 38).

**V. There is Substantial Evidence to Support the Committee's Finding that an Increase of Five Cents in the Minimum Wage Rate Would Not Substantially Curtail Employment in this Industry**

While it is clear that Congress intended to authorize minimum wage differentials for Puerto Rican industries if such differentials are necessary to avoid substantial curtailment of employment, it is also the express policy of the Act that Puerto Rican industries *not* be given "a competitive advantage over any industry in the United States outside of Puerto Rico" (Section 8(b)). It is thus the statutory goal "to reach as rapidly as is economically feasible without substantially curtailing employment the objective of the [\$1.25] minimum wage" for Puerto Rican industries; to this end each industry committee is

<sup>31</sup> That "two-thirds of the members \* \* \* shall constitute a quorum" and that only a "majority of all its members" is required for a Committee decision," was emphasized by this Court in *Red Star Manufacturing Co. v. Grimes*, 95 U.S. App. D.C. 244, 246, 221 F.2d 524, 527, in rejecting a contention that a committee report was invalid since two members had resigned prior to the date of signing.

required by the Act to recommend "the *highest* minimum wage rates" which it determines, "having due regard to economic and competitive conditions," will neither substantially curtail employment nor give a competitive advantage to Puerto Rican industry (Section 8(b), *emphasis added*).

In the instant case the Committee gave "full consideration to the evidence adduced at the hearing (including that officially noticed) and the parties' proposals" (J.A. 1), and found, *inter alia*, "[o]n the basis of the entire record \* \* \* that a minimum wage rate of \$1.22 an hour \* \* \* is the highest minimum wage rate which will not substantially curtail employment in the industry and will not give the industry in Puerto Rico a competitive advantage over industry in the United States outside of Puerto Rico" (J.A. 4). This finding, we submit, is fully supported by substantial evidence in the context of the entire record, and under Section 10(a) of the Act is therefore "conclusive" on this appeal.

The basic consideration supporting the Committee's finding that the raise in the minimum wage rate from \$1.17 to \$1.22 would not cause substantial curtailment of employment is the fact that a significant competitive advantage did exist for Puerto Rican manufacturers in this industry. As the Committee found, "virtually all output of the industry is shipped to the mainland" (J.A. 3). At the time the \$1.17 minimum was adopted the latest state-side average was \$1.70 as of April 1963.<sup>32</sup> The latest figure when the \$1.22 minimum was adopted was \$1.85 as of August 1965, an increase of 15 cents an hour (J.A. 4). In the meantime, under the \$1.17 minimum in Puerto Rico, the straight-time average hourly earnings, as shown by August 1964 and February 1965 figures, remained at \$1.27 (J.A. 4). Even if the highest of the freight costs shown by industry in Exhibit 23

<sup>32</sup> While the mainland figure includes overtime wages, this is more than offset, as the union witness testified without contradiction, by higher fringe benefit costs paid by mainland employers (J.A. 140-142).

(J.A. 224)—11 cents per hour of labor—is added to the Puerto Rican wage, there is still a differential of 47 cents an hour (assuming that mainland producers have no freight costs). Both the industry and the union witnesses agreed that this Puerto Rican industry and its labor force are as productive as on the mainland (J.A. 103, 141), thus demonstrating that differences in hourly earnings between Puerto Rico and the mainland truly reflect differences in wage costs per unit of output. Neither the industry exhibits nor the industry witness made any showing of higher costs of doing business in Puerto Rico (where many of the producers enjoy tax exemption benefits not found on the mainland (J.A. 153)) which would require the continuation of a differential of such size and the competitive advantage resulting therefrom. The direct impact on the wage bill of the proposed increase in the minimum wage rate, as noted by the Committee, would be approximately 2.8%, or approximately 3.6 cents an hour (J.A. 4), thus leaving a substantial differential in favor of Puerto Rican producers.

Other principal factors supporting the Committee's findings and recommendations emerge from the record as a whole: (1) the first eight months of 1965 showed an unprecedented increase in the value of sweater shipments from Puerto Rico over the same period of the previous year—an increase of more than 90 percent as the Committee found (J.A. 3); (2) there is no evidence that increases in minimum wages in Puerto Rico have at any time caused curtailment in employment, nor is there evidence that the \$1.22 rate will cause curtailment of employment; (3) during the past four years, although there have been fluctuations in profits and losses from year to year, the Puerto Rican industry has operated on a profitable level over the period as a whole, and the evidence shows that factors other than changed wage rates, including general business conditions, are responsible for the fluctuations; and (4) the direct increase in the total wage bill resulting from the establishment of the \$1.22 wage rate, which amounts to approximately 2.8%, repre-

sents less than 1% increase in total costs—a modest increase which can readily be absorbed.

In attacking the Committee's findings, petitioners first contend that the Committee "failed to note that sweater shipments have declined by approximately 19% during the three years prior to August 31, 1965" (pet. br. p. 43). Petitioners fail to note, however, that the same table upon which they rely in computing this decline in *quantities* shipped also shows that during the same three year period the *value* of such shipments rose from \$17,524,305 to \$23,785,931—an increase of 36% (J.A. 177, 113). And while the revised quantity figures for the first eight months of 1965 indicated a slight decrease in sweaters shipped over the same period of the previous year—from 269,620 dozen to 265,016 dozen—the value of such shipments, as we have noted, rose by 92% from \$9,173,037 to \$17,608,471 (J.A. 3; 177, 206, 209). During this same 8 month period the weight of sweaters shipped increased by 43%—from 1,419,455 lbs. to 2,033,589 lbs. (J.A. 223).<sup>33</sup> In view of these notable increases in the value and weight of sweaters shipped the Committee could scarcely have been expected to conclude, as petitioners insist it should have concluded, that production in this industry was declining.<sup>34</sup>

<sup>33</sup> Prior to 1965 shipments of knitted swimwear were not separately reported by the Bureau of Customs (J.A. 44), but the figures reported for the first eight months of 1965 show total shipments of 10,439 dozens valued at \$1,012,026 (J.A. 44, 210). Knitted swimwear constitutes only a small fraction of the industry in Puerto Rico, Bonita, Inc. being the only producer (J.A. 161, 60). Similarly, prior to 1965 knit sport shirts were not separately reported but were included in a "basket" classification made up of a large number of different products. For the first 8 months of 1965 a total of 41,858 dozens valued at \$319,463 were shipped from Puerto Rico (J.A. 211).

<sup>34</sup> It may be noted that figures which are now a matter of public record show that for the entire year 1965 there was a considerable increase in quantity as well as value and weight. Whereas shipments for 1964 were 385,804 dozens with a value of \$15,328,650 and weight of 2,724,580 lbs. (J.A. 176), the total shipments for 1965 were 431,421 dozens with a value of \$23,885,409 and weight of 3,778,458

Similarly without merit is petitioners' attempt to relate the three year decrease in numbers of sweaters shipped from Puerto Rico to an increase in numbers produced on the mainland during the same period, and their contention that the Committee should therefore have found a "steady decline in the Puerto Rican share of the mainland market" (pet. br. p. 43). Petitioners' attempt to make this comparison overlooks the fact that while the principal product of the Puerto Rican industry, as the Committee found (J.A. 3), is *women's full-fashioned sweaters*—described by the union witness as a relatively specialized operation (J.A. 115-116)—such sweaters constitute only a small fraction of knit outerwear production on the mainland, where the *cut-and-sewn* sweater predominates (J.A. 115-116). Since the industry's witness was unable to supply the Committee with a breakdown between shipments of the two types of sweaters from Puerto Rico (J.A. 81), and since the mainland production figures do not contain such a breakdown, it is impossible to conclude that Puerto Rican manufacturers are suffering a declining share of the market for the types of sweaters they produce.<sup>35</sup>

With respect to employment, petitioners brush aside the Committee's finding that employment figures for February, May and August of 1965 were higher than the figures for the same months in 1964 and 1963 (J.A. 3, 4) as simply representing "selective" employment data (pet. br. p. 44), and argue that the Committee should have taken into account that "average employment" for the first eight months of 1965 was below the "yearly average" for 1959, 1961 and 1962. Petitioners not only over-

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lbs. U.S. Bureau of Customs, "Shipments of Merchandise from Puerto Rico to the United States." (Jan.-Dec. 1965); U.S. Bureau of Census, "U.S. Trade with Puerto Rico and United States Possessions (FT 800)" (Jan.-Dec. 1965).

<sup>35</sup> The figures petitioners use in making their comparison are also distorted by the fact that quantities produced by Puerto Rican manufacturers are reported by their stateside affiliates as part of their own production (J.A. 54).

look the controlling regulation which provides that among the factors to be considered are employment and labor conditions and trends "particularly since the promulgation of the presently applicable wage order" (29 C.F.R. 511.11), but also fail to suggest any reason why the Committee should have reached back as far as 1959 to compute yearly employment averages when the more recent data show increasing employment. Since such data establish that employment levels in 1965 were higher than for the same months immediately preceding the last five cent increase in November 1963, they provide additional support for the Committee's finding that the industry can absorb the present five cent increase without substantial curtailment of employment.

Indeed, not only do petitioners not even suggest that the claimed long-term decline in employment<sup>36</sup> is the result of past increases in the minimum wage, but the evidence makes quite clear that any such decline is due to the fact that this industry, which has had 13 years to develop a pool of skilled labor, is experiencing the benefits of greater productivity per worker.<sup>37</sup>

<sup>36</sup> Actually, even though the figures selected by petitioners average out higher for 1959 than for 1965, the "decline" claimed by petitioners is not apparent in each month for which figures are shown. Thus, while employment in May and August 1959 was higher than in the same months of 1965, employment in February 1965 was greater than in February 1959, and May 1965 was greater than May 1960 (J.A. 212).

<sup>37</sup> This point was aptly illustrated for the Committee by the union witness through a comparison of employment figures and shipment figures for successive years. Since the shipment figures are for sweaters alone, while employment figures include workers on knit shirts and swimwear, the rise in output for the individual worker is actually understated (J.A. 138-139):

Period Jan.- Aug.	Average Employ- ment	Value of Output		Quantity of Output	
		Total	Per Worker	Total	Per Worker
1959	2423	\$ 9.2 million	\$3,785	246,000 doz.	101.8 doz.
1963	2305	\$11.1 million	\$4,823	264,000 doz.	114.5 doz.
1965	2314	\$17.6 million	\$7,610	265,000 doz.	114.5 doz.

Petitioners also contend that the Committee should have made the comparisons which they suggest between mainland employment and Puerto Rican employment in this industry (pet. br. pp. 44-45). Not only are such comparisons less than valid in view of the different type of sweater operations predominating in each area, but the fact that mainland employment in 1965 was higher than in 1961 and 1962 hardly suggests any reason why the Puerto Rican industry—whose 1965 employment was higher than in 1964 and 1963—could not at this time absorb a five cent raise in its minimum wage rate. Petitioners similarly draw comparisons between the wage and employment position of the sweater and knit swimwear industry and other needlecraft industries in Puerto Rico, contending that the Committee should have noted their relative standing (pet. br. pp. 44-45). However, without considerably more information than was available, the Committee could have only speculated as to the reasons why employment in the apparel and textile mill products industries had been increasing for a longer period of time or at an even greater rate than in sweaters and knit swimwear, or why other committees had, *e.g.*, set a lower minimum for the corset industry and a higher minimum for the mattress and pillow industry (see pet. br. pp. 44; J.A. 187). The important factor is that nothing about these figures cited by petitioners suggests that the Committee was incorrect in finding that their particular industry, at the present time, could absorb a five cent increase in the minimum wage without substantial curtailment of employment.

In contending that the Committee could not have recommended an increase in the minimum wage rate if it had given proper consideration to the industry's profit picture, petitioners again draw inferences and conclusions from the evidence which the Committee was not bound to draw.

It should be stressed, at the outset, that the supposedly bleak profit picture which petitioners paint for this industry in Puerto Rico is obviously due to the particular

situation of three companies—part of the Gordonshire group—which showed losses for the year ending June 30, 1965 while their two other affiliates showed profits (J.A. 190). See *infra* pp. 40-43. All of the other 13 companies which participated in the proceedings—each of which is on a calendar year basis—showed operating profits in their income statements for 1964 (J.A. 190-192, 201).<sup>38</sup> Their average operating profit as percent of sales was 7.3% (\$804,681 profit on sales of \$11,005,755)—compared with 2.18% for the mainland industry in 1964 (J.A. 179).<sup>39</sup> In addition, balance sheet data available for another company in this industry, Coamo Knitting Mills, Inc., which pays a considerably higher average wage than the others and which did not participate in these proceedings, showed an increase in earned surplus of \$179,000 in 1964—on a net worth of \$163,000 (J.A. 168).<sup>40</sup> In view of this evidence of profitability—which is not at all surprising in view of the low wage advantage enjoyed by the Puerto Rican industry—there was very good reason for the industry witness's admission that “[o]f course you would have a different picture” if the industry were looked at without the Gordonshire group (J.A. 92).<sup>41</sup>

<sup>38</sup> While one of these companies—Glamourette—is shown on petitioners' summary (J.A. 191) as having an operating loss of \$10,205 for 1964, that company's audited financial statement shows a profit from operations of \$43,439 for that year (J.A. 201).

<sup>39</sup> Only two of these companies—Northridge and Rosita—showed profits that were less than 3% of sales. Profitability of the remaining companies was 3% to 6% in six cases and over 10% in five cases. The two profitable Gordonshire companies earned in excess of 10% of sales (J.A. 190-192).

<sup>40</sup> Petitioners claim that the higher wages paid by this unionized plant—which the Committee specifically noted averaged \$1.47 in Feb. 1965 and \$1.53 in October 1965 (J.A. 4)—“has no relevance” (pet. br. p. 47), thus overlooking that the statute provides that “wages established for work of a like or comparable character by collective labor agreements” are one of the “relevant factors” to be considered (Sec. 8(c)).

<sup>41</sup> In an effort to nevertheless create a dismal picture throughout this industry in Puerto Rico, petitioners' brief (p. 46) states that

The Gordonshire group is composed of five companies affiliated with MKM Knitting Mills, Inc. and Darlene Knitwear, Inc., both of Manchester, N.H. (J.A. 161-164, 205). By far the largest of the group is Gordonshire Knitting Mills, Inc. which primarily makes women's full-fashioned sweaters from material purchased from its mainland affiliate and sells all its output to that affiliate. This company—admittedly “once one of the giants in Puerto Rico” and a very profitable one until 1962 (J.A. 93)—showed an operating loss of \$233,975 for the year ending June 30, 1964, and an increased loss of \$399,466 for the year ending June 30, 1965. Remarkably enough, Gordonshire's sales during that period increased by more than 44%—from \$3,732,359 to \$5,408,489 (J.A. 190).

Quite naturally, the startling disparity between Gordonshire's sales and profit pictures occasioned considerable questioning at the hearing regarding its possible causes and regarding the relationship between the Gordonshire companies and the mainland affiliate—particularly in light of the fact that the profitability or lack of profitability of Gordonshire and the two smaller companies, Bonita and Malcolm, which also showed losses in 1965, must inevitably be related to the prices they pay to MKM for materials and the prices they receive from it for finished products.<sup>42</sup>

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no mainland company has opened a new plant since 1957 and that since 1957 the number of firms in the industry has remained nearly the same. This statement is misleading. Their own witness referred to the fact that seven firms began operations between 1959 and 1965 as offshoots of companies already operating in Puerto Rico (J.A. 73-74)—i.e., companies which were presumably in the best position to exercise an informed judgment as to the prospects for profitability. In addition, another company—Southwood Knitting Mills, Inc., affiliated with the mainland firm of Grey-Wood Knitwear Industries, Inc.—was currently in the process of going into operation to produce children's sweaters (J.A. 132-133). The reason the number of firms has remained nearly the same, as petitioner's witness acknowledged, is that there has been some consolidation of existing firms (J.A. 198).

<sup>42</sup> The other two firms in the Gordonshire group are Finrico and Tinto, engaged in finishing and dyeing work for their sister com-

Such inquiry elicited little tangible information from the industry witness on which the Committee could make a judgment, for he repeatedly disclaimed any knowledge of these companies other than what appeared in the financial statements—although, significantly, he disclaimed any suggestion that their losses had been due to wage increases (J.A. 93). Thus, when asked whether Gordonshire, when sending finished goods to MKM, bills the latter at cost for raw material, he stated he did not know (J.A. 112). In discussing Gordonshire's losses he claimed that the *quantity* of its shipments had been decreasing, but admitted, when questioned by Committee counsel, that "I am speculating" (J.A. 95) and had no figures to support his assertion (J.A. 93-95). He admitted that if Gordonshire's sales had gone up and its output in numbers had gone down the average value of sweaters produced "must have gone up a great deal" (J.A. 96), but when asked by Committee counsel whether there wouldn't usually be a larger margin of profit on an expensive sweater than there would be on an inexpensive one, the witness admitted that he didn't know the answer (J.A. 96). The witness conceded that lack of response to style changes had been a factor which had affected profitability (J.A. 101), but denied any knowledge of what Gordonshire was doing to meet this problem (J.A. 97, 100, 101).

In the absence of concrete information from the industry witness regarding the reason for Gordonshire's apparent lack of profitability, the union witness offered several explanations, among them being the likelihood that the prices at which transactions were made between the affiliated companies had the effect of shifting profits to the mainland affiliate (J.A. 118-131). He specifically suggested that in the past few years the Gordonshire companies, when selling products to MKM, had not been taking the normal material markup on the materials which they had purchased from MKM—support for which sug-

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panies in Puerto Rico. Finrico went from a loss of \$6757 in 1964 to a profit of \$57,806 in 1965, while Tinto went from a loss of \$14,427 in 1964 to a profit of \$92,090 in 1965 (J.A. 190).

gestion he found in a Dun & Bradstreet report which he read to the Committee (J.A. 118-120).<sup>43</sup> The industry witness did not dispute this suggestion, and, as noted above, had admitted that he did not know whether or not this were true (J.A. 112).<sup>44</sup> The union witness also pointed out that the Gordonshire company's balance sheets

<sup>43</sup> The witness's suggestion is also supported by a sample comparison of material costs in relation to net sales of the Gordonshire group with similar groups in the industry, which reveals a much higher percentage for the Gordonshire group. (Sister companies which perform only finishing and dyeing services for other companies within the group are not included.)

*Gordonshire Group*—Full year ending June 30, 1965  
(exclusive of dyeing & freight costs)

Bonita, Inc.	65%
Gordonshire Knitting	68%
Malcolm Knitting	74%

*Northridge Group*—Full year ending December 31, 1964  
(including dyeing costs)

Midland Knitting	54%
Northridge Knitting	49%
Weststone Knitting	58%

*Glamourette Group*—Full year ending December 31, 1964  
(including freight costs)

Glamourette Fashion Mills	40%
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*Finetex Group*—Full year ending December 31, 1964  
(exclusive of dyeing & freight costs)

Finetex, Inc.	35%
Gurabo Knitting	51%

(The above figures are taken from various pages of petitioners' Exhibit 13 which, by agreement of the parties and with the approval of the Court, has been lodged with the Clerk but has not been printed).

<sup>44</sup> When the industry witness was asked about transactions between mainland and Puerto Rican affiliates he took the position that Treasury Department regulations required that transactions be made at an arm's length level, and since he was satisfied that his clients were acting lawfully, he had not inquired into such transactions (J.A. 105-107, 112). However, as the union witness pointed out, the Treasury regulations, which are concerned with preventing unnaturally high profits from being taken by a tax-exempt Puerto Rican affiliate, prohibit a stateside firm from paying its Puerto Rican company a higher than arm's-length price, but do not prohibit the mainland company from paying less than that price (J.A. 146-148).

show an interest free loan of \$1,500,000 to MKM—money which Gordonshire might otherwise be putting to profitable use (J.A. 122-123; Ex. 13, pp. X29, X36).

The fluctuations occasioned by changes in styles and fashions of the different products produced by the Puerto Rican industry were discussed by the union witness, who pointed out that the popularity of full-fashioned sweaters (the type which Puerto Rican firms primarily produce), while very high in the 1950's, had fallen off around 1960; during the past year they had become popular again, however, and were being mentioned in the trade publications as potentially good sellers (J.A. 124-126). He also read to the Committee material from a Dun & Bradstreet report and two industry publications in which officials of the MKM complex were quoted in the Spring and Summer of 1965 as stating that their production—including that of their Puerto Rican plants—was increasing substantially and that sales and earnings were rising (J.A. 124-126).

In view of the profitability of the other firms in the industry as contrasted with the unexplained recent losses of three of the five Gordonshire companies, and in view of the great increase in sales experienced by Gordonshire specifically and the industry generally, the Committee was not bound to conclude, as petitioners contend, that the Gordonshire losses precluded any increase in the minimum wage rate at this time. On the contrary, the Committee, which had heard the industry witness deny any suggestion that past wage increases were responsible for the Gordonshire company's losses, was fully entitled to conclude, in view of the overall profitability of the industry and its favorable prospects, and the fact that the previous increase had not resulted in curtailed employment, that a five cent increase could be absorbed at this time. This is particularly so since the increase would raise total costs by less than 1%, in view of the Committee's finding that the direct impact on the wage bill would be no more than 2.8% (J.A. 4), and the fact that

the wage bill comprises approximately one-fourth of total costs (J.A. 167).

That the evidence cited by petitioners does not establish that the Committee was in error is readily apparent from this Court's decision in *Red Star Manufacturing Co. v. Grimes*, 95 U.S. App. D.C. 244, 221 F.2d 524, where a 17% increase in the minimum rate (from 46 cents to 54 cents) was upheld despite the fact that there had been a "recent 'downward trend' " in profitability, with two of the three firms in the industry losing money in the preceding year and the third earning a return on investment of only 2.5%. This Court held that it was appropriate to take such loss into account simply as a "factor limiting the amount of the permissible increase," in view of the fact that some prior years had been more favorable, shipments were increasing, and the wage rate raise was estimated to have an impact of only about 2% on total costs (95 U.S. App. D.C. at 247, 221 F.2d at 528-529).

The facts in the instant case—where the latest annual statements submitted by petitioners showed the 15 profitable firms earning an average of 13.3% on investment—were far more favorable in terms of the industry's profitability and prospects; and in view of the statutory policy "to reach as rapidly as is economically feasible" the minimum rate of \$1.25, those facts left the Committee with little choice but to recommend a rate at least as high as the one selected. We submit that under these circumstances, this Court's admonition in previous such cases that "a court \* \* \* should hesitate long before nullifying the resultant \* \* \* order" is especially apposite here. See *Southern Garment Mfrs. Assn. v. Fleming*, 74 U.S. App. D.C. 228, 238; 122 F.2d 622, 632; *Red Star Manufacturing Co. v. Grimes*, *supra*, 95 U.S. App. D.C. at 247, 221 F.2d at 527.

CONCLUSION

The wage order should be affirmed.

Respectfully submitted.

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